SWARAJ CONSTITUTION

By

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"Verily, the Vedas are not dear, that you may love the Vedas, but that you may love the Atman, therefore the Vedas are dear."

—*Brih. Ar. Up.*

S. GANESAN,
PUBLISHER, TRIPLICANE, MADRAS.
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PUBLISHER'S NOTE

Mr. S. Srinivasa Iyengar was Advocate-General of Madras and ex-officio Member of the Madras Legislative Council from 1916 to February, 1920, when he resigned his office and re-entered public life. Towards the end of the year he was returned by the Madras University as its representative in the first general election that took place under the Reform Act. He resigned his seat in the Legislative Council as well as his Companionship of the Indian Empire towards the end of 1921 as a protest against the repressive policy of the Government. In the general elections of 1926 he was returned as a Member to represent the City of Madras in the Indian Legislative Assembly. He presided over the 41st Session of the Indian National Congress held in December, 1926, at Gauhati, Assam.

The scheme outlined and drawn up in the following pages is in essence one for the inauguration of what the author suggestively calls " a federal democracy ." He dismisses the proposals made for the establishment of a unitary and centralised government. He suggests, as a matter of practical convenience as well as of experience, the acceptance of the modern democratic ideals underlying the Dominion Governments. He shows how through federalism alone can we reconcile certain apparently conflicting interests—those of Indian States and British Indian Provinces, those of the different communities and cultures, those of democracy and centralised despotism masquerading as democracy He has closely examined and largely drawn upon the provisions of most modern constitutions, particularly those of the Dominions, the United States and the Irish Free State.

Being the production of an acute constitutional lawyer it is a valuable contribution to the literature on Indian constitution and will, we trust, be universally welcomed as such.

INTRODUCTION

The All India Congress Committee at its Bombay meeting in May, 1927 resolved as follows:—

> "The A. I. C. C. calls upon the Working Committee to frame a Swaraj Constitution, based upon a declaration of rights, for India in consultation with the elected members of the Central and Provincial Legislatures and other leaders of political parties, and place the same before a a special meeting of the A. I. C. C. with a view to its adoption by the Congress at its next session."

The decision to frame a Constitution for Free India hardly requires justification. On the one hand, there are no immediate prospects of a settlement with the British Government. On the other hand, the fight for Swaraj will gain greater momentum and weight when it is backed up by a swaraj constitution either clearly and fully outlined or worked out to its last detail. If the Indian National Congress can adopt a constitution to which the country as a whole will agree, we shall be able to consolidate opinion and to accumulate pressure as against the Government. Another most important consideration is that it will enable us to make the necessary adjustments of all those differences between important interests, sections or communities that stand in the way of united action. Again we shall be depriving our critics and opponents of the excuse they are constantly putting forward that they do not know exactly what we want. This course has become all the more necessary as we have no faith

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whatever in the Statutory Commission. Above all, the time has come to determine and establish our own constitution independent of any question of demand or settlement. It will enable an intensive propaganda to be carried on that will of itself create or release sanctions for which every one is now hungering. On the basis of an agreed scheme of Self-Government for India the Congress should be able to absorb all important political parties in the country and to establish a Swaraj Government or what in effect will be one.

In this view and for the above reasons, the Congress should now proceed to settle a Swaraj constitution for India. Prominent amongst the various proposals are Dr. Besant's Commonwealth of India Bill and the Bill drafted by the Independent Labour Party in England which I think is a distinct improvement on the former.

But neither deals with one of the formidable problems that face us, namely, the position of Indian States either in, or in relation to, the constitution of Free India. I adhere to the view which I stated at Gauhati that the rulers of Indian States ought, in their own interests and in the interests of their subjects, to content themselves with the position of hereditary governors or administrators of their territories under a system of representative institutions and responsible government. If as is probable the Indian Legislature is to be bicameral, the rulers of Indian States should be members of the Senate. Matters relating to the affairs of the States of or affecting the relations of one State to another or to the Government of India or of a Province ought not to be excluded from the consideration of the Central Legislature.

In framing a Swaraj Constitution for India one must keep in mind certain general principles. In the first place, we cannot surrender our right of self-determination: it follows that the constitution should not be put in the

form of a bill to be introduced into or passed by the British Parliament. The British and Indian Governments can take notice of our own constitution and treat it just as they choose either as our demand or as our scheme. But the constitution must be ours; and they can if they like come to a settlement with us on its basis by persuading us to agree to this or that alteration.

In the second place, having regard to the need for the largest possible unity consistent with national self-respect, the constitution need not necessarily be framed on the lines of fullest national independence. We may content ourselves with framing it on the basis of full Dominion Status which for almost all practical purposes is equivalent to it. For, as the Inter-Imperial Relations Committee of the Empire Prime Ministers has stated, the position of these Dominions is that of "autonomous communities within the British Empire equal in status and in no way subordinate one to another in any aspect of their domestic or external affairs though united by common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations." Further, as that Committee rightly adds, "every Dominion now and always must remain the sole judge of the nature and extent of its co-operation." If as is not improbable and as is indeed already evident, our demand is rejected, fullest national independence should be our goal, and must therefore be expressly reserved in the constitution.

In the third place, having regard to the history of the development of the Indian Constitution, such as it is, we must proceed to frame it on the model of the constitutions of western democracies. To-day the fundamental principles governing their political institutions are of international and universal validity: they transcend racial, linguistic and geographical boundaries. And, after the Montagu-Chelmsford Act, have sprung into existence Indian political parties in full

contact with electorates, with written and unwritten rules of discipline and leadership, with expressed or implied programmes and policies and able and willing to carry on electoral compaigns in accordance with uptodate methods of approach and propaganda. The rules of debate and of business have easily been assimilated even by members of the Indian legislatures who have had no prior experience. The Presidents of the Indian Legislative bodies have discharged their duties efficiently and ably, and have given rulings with decorum and impartiality, with full understanding and decision. The debates in these legislatures have demonstrated our political aptitudes, our gifts of parliamentary expression, alertness and skill, our devotion to council work and our business-like grasp of principle and detail. These are things of which the English Parliament or any other legislature in the world can be proud. The technical literature of two continents relating to parliamentary government has been mastered by numbers of Indians. A comparison between the official and the non-official benches, if we put aside those who contribute to the fashionable apotheosis of power, has been far more favourable to the Indian elected and nominated members than to the European officials and unofficials drawn from the highly trained democracy of the United Kingdom. And the intelligent exercise by a majority of voters under the Montagu Act of their right to choose their representatives has been the salient feature of the elections held under it, especially of the general elections of 1926. Office, power, wealth and all the other usual influences did not prevent those who openly opposed the Government and fought for Swaraj from obtaining striking success at the polls, severely handicapped as they were. For good or for ill therefore we have accustomed ourselves thoroughly to representative institutions of the western type. It is therefore a futile task to inquire whether Indians can live under and successfully work a

constitution providing a full responsible government for India on western lines.

It has been suggested that our constitution should take the form of amendments to the Government of India Act. This proceeds upon an erroneous view. We have to determine our own constitution and the Government of India Act cannot serve as a model for a constitution giving full expression to Dominion Status.

The question has been debated whether the Swaraj Constitution should be on the federal model or should be of a unitary government. Here again we must avoid thinking in terms of the calculated centralisation to which we have become accustomed under the British Government and which is so convenient to those that deny us our freedom. The British Government and the Bureaucracy assert that a strong centralised government is indispensable and therefore full provincial independence cannot be given. Some Indian publicists fall into this trap and favour a unitary government with concurrent powers for the central and provincial legislatures in provincial subjects or equivalent contrivances all resulting in a material diminution of full provincial responsible government. But the British Government and the Bureaucracy assert with far greater emphasis that in order to have a strong centralised government the retention of their own steel-frame is necessary and the central government cannot therefore be converted into a full responsible government. The safest and easiest way of breaking through this vicious circle is to accept the principle of provincial autonomy in its two-fold sense of the freedom of the provincial government from an external control by the Government of India and the status of full provincial responsible government. The reconciliation between a strong Central government and regional autonomy is at all times and in all countries difficult but the division

of functions on the federal plan is, in Indian conditions, the shortest and surest way to Swaraj.

The advantages of a Unitary Government are said to be (1) less expense, (2) less conflict between central and provincial authorities and (3) freedom from the domination of one community over another. The first is more imaginary than real; the second is largely avoidable by adopting an appropriate safeguard; and the third is wholly founded in error. On the other hand, the disadvantages of the Unitary system are obvious. In the first place, it is necessary to establish a system of government which will provide for the gradual inclusion of the Indian States. A free Federal India can easily fit into its system such States on the condition that, while they adopt in whole or in part one or other form of responsible government, they retain their full domestic independence of the Central Government. Unless in our scheme we find a place for Indian States with their histories and treaties and varied constitutions, it will be extremely difficult to make India a stable Swaraj India. The second advantage of the Federal system is undoubtedly the consummation of that provincial autonomy to which everyone is naturally attached in a vast and varied country like India. In the conditions of India, which are in the minds of us all and which need not therefore be stressed, lasting equilibrium can best be maintained only by the grant of full responsible government to the provinces more or less on the Federal plan. In the third place, if the settlement which must come sooner or later between the British Government and ourselves, delays or diminishes a full responsible central government, the provinces will not have gained that advantage which they would have obtained on the basis of full independence in provincial matters but would continue to be, as they are now, in alien leading strings. In the fourth place, any dominant caucus, communal, political, or dynastic, ruling the Central

Governmeut of a Swaraj India will be able to disturb the equipoise more easily in a unitary system than in a federal system and might bring about the impairment or distruction of Swaraj as the history of mediæval governments in India illustrates. In the fifth place, neither neighbouring States, Indian or Asiatic, nor European States will on the Federal plan be able to dominate India as a whole even if they continue to get the members of the Central Executive Council under their influence.

In the sixth place, communities, religious or other, cannot exist, and indeed must give up any such hope, as politically distinct communities if they accept the rule of democracy which after all is the rule of the majority. Let us realise that a too anxious attempt at protection of minorities against majorities only serves to defeat its own purpose and either retards or prevents that fusion and merger of communities into a single secular and homogeneous nation which shall be scrupulous alike in the safeguarding of the freedom of conscience and of religion and in keeping the civic and political activities of a nation free from the serious disturbances due to the intrusion of sectarian zeal or religious antagonism. It should not matter to us, therefore, which community, religious or other, is or will be in a majority and in which province.

Lastly, and above all, a highly centralised government leads always to exploitation and often to wars. A Federal Democracy is a much-better safeguard against the springing up of ambitious oligarchies, commercial or militarist. In the nature of things a Federal Democracy is of a higher order and is on a higher plane than a strong centralized unitary Government, democratic more in form and theory than in actual working and result. For, the former has as its roots the largest possible self-government and the largest possible justice, freedom and equality. Perfect and equal circulation in the extremities

is necessary for the permanent well-being of a democratic state, particularly in Asia, with its geographical, racial and cultural peculiarities.

The truth is, the Eastern conception of Law as above the Sovereign, of Dharma as above the King, has made indigenous Indian and Chinese institutions democratic in operation though autocratic in form. (Manu XII, 50; Prof. Giles, Chinese Civilization, p. 41). The passionate plea through the ages for Dharma and Justice as the highest spiritual duties of man has made the Indians too democratic to be able to live happily except in a perfect democracy or under a King who, through humility and strenuous self-examination, has conquered his senses and who is therefore the visible embodiment of the Law and Justice. (Manu VII, 39 to 46). "Justice, being violated, destroys; justice being preserved, preserves; therefore justice must not be violated, lest violated justice destroy us": this has been a perpetual admonition to Indians. (Manu VII, 15). Therefore either a secular democracy with fullest regional autonomy or the autocracy of a self-controlled King, above whom Dharma shines as a star, has alone suited the psychology of India in particular and of the East in general. The latter is impossible to our modern minds and the former is therefore the only alternative. A Federal Democracy, therefore, is to India, with its immense distances, and to the Indian mind with its sensitiveness, a far better expression of justice, and will therefore be far more successful than a unitary democracy with dependent provincial councils. The latter will not satisfy the passion for justice of Indians in each province, and will be held to be an immoral concentration of power. The centripetal and balanced federalism of Canada is however preferable to the perfect federalism of the United States or of Australia (2 Marriott p. 412.)

The spheres of legislation and of finance as between the Central and the provincial Governments should un-

doubtedly be clearly defined, and the residuary power should as in the case of Canada be vested in the Federal parliament. The view however of the Minority Report of the Muddiman Committee and of others that the requirement of the Central Government's sanction to provincial legislation is not inconsistent with full responsible provincial Government does not appear to be sound. The doctrine of previous sanction cuts not only at the root of provincial independence and development but it is open to the objection that it is vicious in principle; for it makes a fully elected provincial legislature subordinate to an executive government not responsible to itself. Its application, as our experience has demonstrated, has been only conducive to endless dilatoriness, obstruction and the imposition of a secret and external control. In short, if it is frequently exercised, it will be destructive of any scheme of full responsible government in the provinces.

As the Minority Report of the Muddiman Committee rightly says it is vital to any scheme of provincial autonomy that the finances of the provinces must be separated from those of the Central Government. Some of the recommendations of the Taxation Enquiry Committee appear to me to be sound and should be embodied in the Swaraj Constitution. Beyond however laying down certain general rules governing the financial arrangements of the Commonwealth and the financial relations between the Central and the Provincial Governments, it were a fruitless expenditure of time and an invitation to pedantic controversy to attempt to provide in detail for all those matters which are now dealt with in parts (ii) and (iii) of the Devolution Rules. Opinions will differ as to what taxes should be assigned to the Federal Government and what to a provincial government, just as they will differ as to which should be, for legislative purposes, a provincial subject and which a central. In these matters,

there can be no question of finality or of theoretic perfection. As the Taxation Enquiry Committee points out, there is no federal government in which the distribution of taxes between the central and provincial governments is based on considerations of pure theory. The Parliament of Swaraj India therefore can and should with the consent of provincial legislatures alter any scheme of distribution which may in the first instance be embodied in our Constitution.

The disputes between the Central and the Provincial Governments are easily avoided by a provision that no act of the Central legislature shall be open to question in any legal proceedings on the ground that it affects indirectly or inferentially only a provincial subject.

Is it necessary that the Swaraj constitution should provide minutely for every possible subject or case? The declaration of the fundamental rights of the Indian nation as against others and of Indians themselves as against their Government must indeed form the most important feature of the constitution. We must provide for the fullest control over the services and for the transfer to Free India of the existing jurisdiction of the present government in relation to Indian States. For the rest, the Constitution Acts of the several Dominions as well as the constitution of the United States furnish us with most useful models. And on most matters, the Irish Free State Constitution, the British North America Act and the Commonwealth of Australia Act are as good teachers as any. Mrs. Besant's Commonwealth of India Bill and the draft bill sent to us by Mr. A. Fenner Brockway, the secretary of the Independent Labour Party rightly follow them. It will be quite sufficient, if, in addition to the declaration of rights, we approve of an outline of a constitution embodying a full Dominion Status.

By far the most important points to be settled relate to the electoral qualifications, the formation of

constituencies, the formation of provinces and the constitution of the legislatures.

The strength of the Provincial and Central Legislatures should be very largely increased.

The strength of the Senate should be fixed at one member for each million of the population of Free India as ascertained at the previous census, in other words, at 247. The strength of the Legislative Assembly should be fixed at one member for each half-million of the population of Free India as ascertained at the previous census, in other words, at 494. In the provinces the strength of each Legislative Council should be fixed at one member for each two hundred thousand* of the population of the Province as ascertained at the previous census. I should certainly prefer it should be at the rate of one member for each hundred thousand, but it may be objected to on the ground that it would be very expensive.

By this plan the unwieldiness and inequalities both in area and in the number of voters of the constituencies will be either eliminated or substantially reduced. A very large increase in the strength of the existing legislative bodies will meet the objections of the advocates of communal electorates and will result in a just redistribution of seats and in the satisfaction of legitimate political ambitions. Above all, the constituency and its respresentative will be much more in touch with each other and there will be real representation.

Nominated officials and unofficials can find no place in the legislature of a self-governing country: they represent and are responsible to none but the Government. As our experience has demonstrated, the existing system of

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* On this plan, Bengal would have 233 members; U. P., 226 members; Madras 211 members; Bihar and Orissa 170 members; Punjab 103 members; Bombay 96 members; C. P, 69 members; Burma 66 members; Assam 38 members. This shows how a redistribution of provinces on the linguistic basis will not result in greater inequalities.

nominations has effectively retarded constitutional development, the formation of national character and the consolidation of public opinion. It has been responsible for more mischief than any single feature of alien rule. Nominations are, in principle and in actualities, the very negation of democracy and responsible Government and no legislature can function as a representative institution which contains officials and unofficials nominated, not by the people, but by the Government. Besides, nominations to a body for which elections are provided, corrupt everyone alike: the giver, the recipient, and the neighbour. A nominated member feels, as a gentleman, deeply indebted to the Government: he has been spared considerable expense and trouble and the risk of defeat. And rarely, indeed he refrains from desiring re-nomination: his good behaviour is therefore ensured. Talent, character, energy and public spirit preferring the secret entrance become corrupted which, had they stormed the front gates of the fortress, might have produced a great leader of men, a great statesman, a tribune of the people, a Gandhi or a Das. The nominated member's average neighbour in the council or in the district, often feels that he has foolishly chosen the arduous and expensive path of a contested election instead of the pleasant short-cut of paying court to the government: in such moments the seeds of corruption are sown in him. As to the giver, when the government discovers how much a nomination is coveted whether it is to the Council of State or the Assembly, to a Municipal Council or a Taluk Board, instead of adjusting itself to the elected representatives of the people, it adopts in order to defeat them, the cheap and certain method of raising quite an army of concealed followers who, wearing the clothes of unofficials, are politically far more useful to it than its standing army of highly paid officials. Without wholly elected legislatures, it is impossible to enjoy to any extent the benefits of self-government or to shoulder

its responsibilities. Nominations, therefore, should not be permitted to continue to any extent or for any purpose.

The electorates should, without exception, be general and common electorates. Communal distinctions can neither be recognised nor perpetuated; for, they are destructive of democracies. Our experience since the Lucknow Pact has demonstrated that communal electorates are fraught with disaster as well to communal advancement as to national solidarity. The volume of opinion in favour of joint electorates among Mussalmans is distinctly on the increase. The interests of peace and order and active co-operation between Indian communities necessitates a common electorate which besides is the surest foundation of Swaraj.

Thanks entirely to the Montagu scheme, separate electorates by perpetuating communal distinctions have artificially deepened communal feeling till in less than a decade political parties have become religious sects full of mistaken zeal, misunderstanding and bitterness. Nor do separate electorates confer any protection upon minorities. For, a minority community must, in order to have an effective protection, be in a majority in each legislative body, or must at least be in equal strength with the other community, which is a *reductio ad absurdum*. Again, the communal electorate isolates the minority community and consolidates the majority community and instead of being a protection to the former is a source of danger to it. As has been said: "Minorities, as plain matter of fact, have under a popularly elected House of Commons no protection whatever for their legal rights". (Mc Kechnie, The New Democracy and the Constitution p. 164). In one sense this is true; but the fallacy in this line of reasoning is the assumption that a majority is permanent and unchangeable and its sense of power will not be tempered by justice and goodwill, or weakened by its own internal differences. The fact is frequently

overlooked that no power which is abused can escape the long arm of consequences. Paradoxical as it may seem, the best protection for a minority is, for it not to harden itself into a sect and sulk insolation or attempt reprisals, but to work in the faith that it will soon become itself a majority or have its support. Each community has not a separate legislature of its own and its members go to the common legislature to work together with members of other communities; co-operation between members of several communities must therefore begin at the base of the common legislature which is the electorate. The mistrust of one another which finds expression in a separate electorate is a mistiust of the common legislative body itself. Confucious said: "If you mistrust a man do not employ him; if you employ a man do not mistrust him". And that saying might well apply to those who mistrust their fellow members belonging to the other communities and must not therefore enter the councils. On the one hand, a common electorate compels all the communities to co-operate together and eliminates the extremist who will exploit the communal differences. On the other hand, a candidate belonging to the majority community and competing with other members of his own community, desires to secure the vote of the minority community and becomes more humanised in the process. In that way, on the common electorate plan, every member of a legislature belonging to a majority community seeks to secure and retain the goodwill of the minority community and therefore to represent its views and feelings. When the balance is struck, it will be found that a common electorate distinctly favours the minority communities in India and a separate electorate decisively favours the majority community in India. Accordingly,the better mind of the Muslim, Sikh, Parsi and Christian communities has realised the wisdom of a common electorate.

As to Europeans in India, if they regard themselves

as a community, not in, but of India, only racially and culturally different from the others, they should not claim a separate electorate. If, however, they claim to be the agents or representatives of the British people with interests adverse to those of the people of India, they cannot, on principle, be entitled to any representation. Those Europeans in India, again, who wish, or profess the wish, to help Indians in building up an Indian Democracy can have no objection to a common electorate as in that case they are certain to be returned. The case of Anglo-Indians cannot be distinguished from that of Muhammadans, Sikhs, Parsis or Christians and in their own interests they should welcome a common electorate.

No provision by way of separate electorates should, therefore, be made in the Swaraj Constitution for Mussalmans, Sikhs, Parsis, Christians, Europeans, Anglo-Indians or others. But, as a transitory measure, a system of common electorates may well provide for reservation of seats in favour of all or any of the communities in India. Alternatively, the method of election by the single transferable vote may be adopted. But it appears to me, the better plan is, in Indian conditions, either the cumulative vote or the List system. By the former each voter is given a number of votes equal to the number of representatives to be elected and is allowed to distribute his votes in any way he likes giving one to a candidate, all to a candidate or otherwise. The List system, of which a definition has been attempted in the last chapter, is "now used for various elections in Norway, Sweden, France, Germany, Ireland and most of the Cantons of Switzerland." It has been described by one writer as "the simplest and justest of the many systems that have been proposed" (Holt's Modern Government p. 158). Anyone of these four methods, namely, reservation of seats, the single transferable vote, the cumulative vote or the system of list or ticket, is a better and safer method than

the crude and disruptive one of separate electorates which is neither helpful to the country in general nor to the minorities in particular.

Nor does it appear to me to be sound that there should be special electorates to represent interests. They are open to all the objections to which separate electorates are open. Such electorates will be inconsistent with sound democratic principles and will detract from the justice and purity of an enlightened state. Vested interests will become a close corporation and will disturb the equilibrium of the body politic; the hardening will result in class war and will injure the special interests themselves. Our experience of the Montagu and still earlier reforms has demonstrated the futility of special electorates to represent interests. Landholders, for instance, cannot gain anything by isolation, and on the other hand are certain to lose by it. If they want to influence a legislature they cannot do so directly in the legislature itself but have to influence the electorates which send the majority of the representatives to that legislature. The wiser amongst them have already realised it and therefore seek to represent the general electorates. I was at one time inclined to think that Universities may, perhaps stand on a different footing, and, as the most distinctive civilising agencies, they may require special attention in the bustle and levelling of a modern democracy. But the truth is, that the special provisions relating to Universities are historical survivals and have no justification except in sentiment. And what is it that two or three representatives of the Universities can do? Universities are or must be more or less self-governing bodies and they command or ought to command the general esteem of the community. And education does not require to be specially represented; for it will be the common property of a very considerable number of the representatives of any legislature.

Neither Industry and Commerce nor Labour requires special representation in India anymore than they do in western democracies. No separate provision by way of nomination should or can be made for members of the "depressed classes." They must realise that they are the backbone of the agricultural and industrial democracy of India and that they will have no difficulty whatever, social or otherwise, in being members of the Indian Nation and in having and in exercising an equal right to take part in its affairs. The State can neither treat nor allow to be treated as untouchable any community or person. A fundamental rule to that effect should be adopted. If, however, there be still any difficulty in the matter, it can and must be met by a reservation of seats for members of such communities on the basis of a common electorate. I can only repeat what I have said elsewhere that we must make an end of untouchability apart from any question of Swaraj and whether we ever win it or not. Judged by any test huminitarian, rational or spiritual, patriotic or democratic we cannot countenance the dogma of untouchability. There is a saying* among Vaishnavite schools in Southern India:

दवालये समीपस्थान् देवसेवार्थमागतान् ।
चण्डालान्पतितान्वापि स्पृष्ट्वा नस्नानमाचरेत् ॥

Members of the so-called untouchable classes are rapidly becoming indistinguishable from the mass of the population. There are many capable and educated men among them and they are making their mark on all departments of national life. And separate electorates will but emphasise their social, religious and economic difficulties and will impede their advancement. It is short-sighted leadership that

* One should not bathe after touching those persons who are standing near a temple or have come for the worship of the deity, even if they happen to be chandalas or outcasts.

will insist on special electorates or a system of nominations for them.

The question of electoral qualifications is amongst the most vital questions. Whilst our goal may be adult franchise, we are constrained to put it aside for the present as impracticable. The existing rules relating to electoral qualifications have enfranchised only 7·4 million citizens, the unenfranchised population consisting of 239·6 millions. The total literate population of British India is reckoned at 18·6 millions. On the whole, the safest electoral qualification for the present appears to me to be literacy which will confer a right to vote on over 18 million citizens. There is the further advantage that if literacy is made the electoral qualification a most powerful impetus will be given to elementary education. The present scheme of franchise devised by the British Government is open to the most serious objection which Lord Birkenhead on behalf of the British Government brings forward against us instead of admitting it as a serious demerit of their own administration and as a contrived featuie of the British-made constitution. He asks his audience to remember "of the fractional percentage who vote in the elections, how large a proportion consists of the illiterate class who mark their papers because they are unable to read." The test of literacy is, therefore, the right test to apply. It will prevent a repetition of by far the greater part of those scandalous irregularities that have been in painful evidence during the last three general elections. The payment of any tax, cess or assessment, the holding of any land or house of a minimum value, the receipt of any prescribed income as labourer, trader, agriculturist or clerk or otherwise might well be alternative or restrictive franchises. But they are all open to the objection that they are not co-extensive with a franchise based on literacy. Again if the payment of a tax, the receipt

of an income or the possession of property, conditioned by literacy, is to be the electoral qualification, it may not be fair to either the literate or the tax-payer or to the unemployed democracy of India.

The next question is whether the electoral qualifications should be identical for the Senate, the Legislative Assembly and the Legislative Council of a province or should be different. I would prefer them to be the same for all the three bodies ; for it will mean a great saving in expense as the same registers will suffice ; and the elections also will be much simpler. There is no special virtue in prescribing different qualifications for the provincial and the central legislatures. The voter who is entitled to be represented in the province is equally entitled to be represented in respect of the national purposes, for the two legislatures complement one another and represent the total interests of the voter, both as a citizen of the Commonwealth and of the province. There may, however, be other considerations; therefore each legislative body may be empowered to superimpose the payment of tax,the possession of property or the receipt of an income onthe basic qualification of literacy, if it is judged necessary to discriminate between the three electorates.

A re-arrangement of provinces either on the linguistic basis or on the basis of equal population or equal area or on the basis of equal cultural or political efficiency is necessary as well in the interests of a decisive reduction of expenditure as in the interests of an accelerated democracy. Madras and the United Provinces are too large and function badly. Bombay is too small and her wealth and enterprise should be available for a larger area. On the whole, the linguistic basis is the safest for the proper functioning of Indian democracies, and for the minimising of inter-communal friction. It is the natural solvent of religious and communal differences and is

amongst the most powerful of unifying agencies. It is by far the best foundation for India's Swarajya.

I think that the Central Legislature should be bicameral while the Provincial Legislature should continue to be unicameral. (Marriott, Mechanism of the Modern State, Vol. I p. 409.) The former is in accordance with the almost universal practice of the countries of the world. A two-chamber council however is, for a component province, neither necessary nor useful. It will result in greatly increased expense and dilatoriness. Besides it is a needless duplication of machinery and, at the best of times, the proceedings in the one House will be merely repeated in the other. It is bound however to lead to deadlocks and might even be dangerous. Opinions will not, I think, differ on this matter. I have, however, little doubt that the British Government will seek to force it upon the provinces in India.

The devices of the Referendum, the Initiative and the Recall are still in the stage of experiment and can be adopted by India only after the full use, for a period, of the ordinary apparatus of representative and responsible government. The first two provide for the direct exerciseby the electorates of legislative powers. They embody. the principle of Direct Democracy. The device of the Recall of its elected representatives by the electorate, is not required when as here the duration of a provincial council or of the Assembly is only three years. It may perhaps be occasionally required in the case of the Senate if the term of office of a Senator is to be, as has been suggested, six years. The Recall may not be necessary in Swaraj India in anv case though it has often been felt that it is required to-day for the legislatures under the Government of India Act. All the three devices proceed upon the distrust of its representatives by the electorates. As has been observed, neither the Referendum nor the Initiative is "theoretically appropriate to the mecha-

nism of representative government." (I Marriott p. 465). But the former is on occasions necessary. The Swaraj Constitution, however, may empower the Parliament to institute, after ten years from the commencement of the constitution, the Referendum, the Initiative and the Recall.

It is important that the Swaraj Constitution should provide for its own revision or amendment. The Continental and South African constitutions provide for it as a matter of ordinary legislation requiring, however, a two-thirds majority vote. The South African Act further provides a period of time before which some of its provisions may not be amended. The American Constitution requires that an amendment of it should be proposed by a two-thirds vote in each House of the Congress and adopted by the legislatures of three-fourths of the States. The provision in the Commonwealth of Australia Act differs from both and requires an alteration of the constitution to be passed by an absolute majority of each House of the Parliament and to be submitted within six months to the electors qualified to vote for the election of the members of the " Lower House" and approved by a majority of the electors voting in a majority of states being also a majority of all the electors voting. It is not advisable that the Swaraj Constitution of India should be lightly or frequently changed nor is it advisable to make it too regid. Avoiding the two extremes, contained in the Continental and the Australian Constitutions respectively, I have preferred to adopt as the best the suggestion of the Independent Labour Party on this matter.

In drafting the Swaraj Constitution, wherever consistently with our requirements I could, I have adopted the provisions of the constitutions of the Irish Free State, Australia, Canada and the United States and of the Government of India Act, with or without modifications. Dr. Besant's Commonwealth of India Bill and Mr. A. Fenner

Brockway's draft have been very helpful to me; and my greatful acknowledgments are due to both. To Dr. Besant is due every credit for focussing attention upon the necessity of framing a Swaraj Constitution for India and for presenting a very valuable political document as well as for her splendid help to us in our fight for Swaraj. The system of graded franchise which has been adopted in the Commonwealth of India Bill is, however, open to the objection that it is neither satisfactory in itself nor consistent with the principles of popular representation. And, while I agree with her on the vital importance of village panchayats, I do not think that a constitution which provides for a full responsible government and for elected legislatures with plenary powers, in that behalf, should or need contain a code of local self-Government dealing with village panchayats, local boards and municipalities. It is necessary to realise clearly that there can be no genuine autonomous panchayats except in a Swaraj India and that it is the alien rule that has been responsible for their atrophy and extinction. While the panchayat has its uses, care should be taken that it is not stressed at the expense of full responsible government for India and for the provinces.

To Mr. A. Fenner Brockway and the Independent Labour Party, the greatest credit is due for clearly visualising a Swaraj Government under which a free self-respecting Democracy can live and work and for presenting a very useful and attractive draft based on the best models and an actual experience of western Systems. His picture however is defective in some important matters and details. His division of subjects as between the central and the provincial legislatures is not satisfactory and he gives no clear definition of central and provincial finance. I have made my own suggestions on these and other matters and have also supplied some omissions.

Turning to the resolution of the Legislative Assembly dated the 8th September, 1925, it has been most valuable in the direction of concentrating attention on a Round Table Conference or Convention to settle India's Constitution. Beyond it, however, it can hardly be regarded either as a correct or as a sufficient basis for a satisfactory constitution of a self-governing India. It is not in entire accordance with the demand of the Congress for Swaraj or with its conceptionof Swaraj. Further, the resolution of the All India Congress Committee directs a framing of a Swaraj Constitution on the basis of a declaration of rights. Nothing short of a constitution providing full responsible government for India such as self-governing dominions enjoy, should be agreed to by the Congress or the country or can satisfy our requirements. The resolution of the Assembly falls far short of it. Clauses (b), (d) and (f) of that resolution refer only to the Governor-General in Council under the Government of India Act and beyond asking for a Minister to assist in the Indianising of the Army cadre do not insist on a cabinet of Ministers responsible to the legislature. The Governor General is by himself to have decisive residuary powers and transitional reservations in vital matters and a power to overrule the vote of the Assembly upto a fized maximum in connection with the expenditure on defence. Again, the resolution of the Assembly in September, 1925 only expresses the minimum requirements on which the parties in the Assembly were then able to agree. Much water has flowed under the bridges since then. Our judgment of the British government and our vision of Swaraj are much clearer today. We cannot in framing a Swaraj Constitution, lower our demand or our ideal. We should not, therefore, subscribe to the very ambiguous and defective formula with its obscurities, limitations and reservations that was moved in 1925 in the Assembly as the minimum formula of

a momentary expediency in order to secure the support of a majority of the members of the assembly at that time. We would be less than just to that resolution if we did not remember that it contemplated an almost immediate settlement with the Government which neither came then nor has come now. On the other hand we are face to face with the gravest situation in the history of our struggle for freedom which has now become a struggle for life and death. It is therefore neither right nor wise for the Congress and the country, indeed it will be suicidal for them, when they have to frame a Swaraj Constitutin for India, to look back to that resolution. We are seeking to exercise our right of self-determination for the first time and should not, by hasty or personal commitments, pledge or embarrass the future. Therefore, as I said at Gauhati, we should clearly think out what Swaraj involves and requires and should not abate an iota in our demand for full self-government. Our Swaraj Constitution must be that of a genuine Swaraj state and not of a half-way house. Mr. Fenner Brockway's draft and mine proceed on those unambiguous lines.

The resolution passed by the Assembly on the 8th of September, 1925 demands that the Council of the Secretary of State for India should be abolished but retains the Secretary of State for India whose position and functions are to be assimilated to those of the Secretary of State for self-governing dominions. I am quite clear that we should not have a separate Secretary of State for India alone. For, it is far better that the Secretary of State for the self-governing dominions should represent India also along with the rest in the British Parliament. There is safety in numbers, in precedents, and in a common form. India must therefore be exactly on the same footing as the other self-governing dominions in her relations to the Crown and the British Parliament.

Nor do I agree with that part of the resolution of the Assembly which deals with the Indian Army and recognises the over-riding power of the Governor-General in Council to appropriate upto a fixed maximum any sum which he may consider necessary for expenditure under the head "Defence". For, in the matter of defence more than in other matters we should be in exactly the same constitutional position as other self-governing dominions with powers, rights and obligations similar to theirs. It is not advisable that in our written constitution we should provide for any material modification of that position for any period of years, though we may, by mutual agreement, employ the British Army and find funds for it. Articles 6 to 9 of the Irish Free State Agreement, 1922, furnish a useful precedent. Lord Birkenhead arrogantly asks: "Do you desire that the British Army should be withdrawn from India ? Do you desire that the Civil Service should be withdrawn from India ? Do you desire that the protection of the British Navy should be withdrawn from the Indian shores ? I have never found one Indian however hostile to this Government, however critical of our proposals in relation to the Indian development, who desired that the Army should be withdrawn, that the Indian Civil Service should be withdrawn, or that the protection of the Navy should be withdrawn." We certainly repudiate the insinuation and we unequivocally desire that the Army and the Civil Service and the protection of the Navy be withdrawn from India. We have no objection whatever to their withdrawal by the British Government and no *arriere pensee* on the subject. For, Free India can buy and man a fleet and maintain an army on the most modern lines at least as well as a Bond India. We know that it is nothing but a question of finance and the training of men. We know that Indian Sepoys and Indian Officers have distinguished themselves in innumerble fields, quite as well

as European soldiers and officers, both before and during the British regime. We are confident as to the future, for, the army of a Free India will be filled with a new spirit, as the army of liberated France was, and, if it becomes necessary, will surpass the present Indian army in valour, endurance and training.

The crushing expenditure of the present Government due to a too highly paid and too elaborate system of public services calls for a drastic revision. The heavy taxation and the impoverishment of the country are primarily due to it. The unedifying spectacle as well of the unpatriotic competition for equality in the matter of pay between Indians and Europeans as of the endless competition amongst Indians themselves for posts and places and of the gravest communal differences and disturbances and the supposed ease with which a handful of foreigners rule us are almost entirely due to the costliest hierarchy of services in the world which is maintained by the British administration and to the fatal obsession, division and demoralization consequent on it. The deadly eminence of the services, their intoxication ,and apotheosis, must go if freedom is to win as against salaried ambition and salaried contentment. Therefore, it must be a fundamental rule that no office or place in British India shall carry with it a salary exceeding Rs. 2000 a month. If Indians demand that their maximum salary should be reduced to Rs. 2000 a month what a powerful swaraj lever it would be! The bureaucracy and the British Government must be made to feel that a high salary is no longer a temptation to an Indian official. The members of the Civil Services will then realize that in an India where equally efficient Indian officials are available for much less remunerations than their own, they can have no place. The whole apparatus of a responsible government and the formation of a larger number of provinces so essential for the fulfilment of democracy, require us to reduce

the salaries in all the services all along the line except in the matter of salaries below, say, Rs. 250 or Rs. 300. The only exceptions to the rule of maximum salary that we can make must be the offices of Governor-General or Governor and the highest offices in the Indian Army. Special contracts for the temporary employment of alien experts by a Swaraj India should not, where strictly necessary in our own interests, affected.

The preamble to the constitution that I have suggested explains itself. It is necessary in that form or in another to a constitution framed in exercise of the right of self-determination and for the purposes we have in view.

The expression "Commonwealth of India" is used after the Commonwealth of Australia both in Dr. Besant's draft and in the draft of the Independent Labour Party. "Swaraj India" or, after the Irish Free State, "Free India" would perhaps be a better name.

In Appendix A are given the texts of the resolutions on Hindu-Muslim Unity in the one case passed by the A. I. C. C. meeting at Bombay in May, 1927, and in the other passed by the Unity Conference at Calcutta in October, and approved by the meeting of the A. I. C. C. that followed it. The Calcutta resolutions proceed on the principles that no community in India should be allowed to impose its religious views or obligations on any other community and that the free profession and practice of religion should subject to public order and morality be guaranteed to every community and person. They should, therefore, with such modifications and improvements in substance and in form as may seem necessary, be embodied as an integral part of India's Swaraj Constitution. Hinduism forbids, while Islam permits, cow sacrifice. But both Hinduism and Islam permit sacrifices of other animals such as goats or sheep. For myself, I am wholly against all animal sacrifices in the name of any religion

as Ahimsa must be its supremest aim. And I, firmly believe the proposal, if adopted, will conspicuously minimise cow slaughter as freedom will replace the sting of domination. But neither the present State nor the Swaraj State can interfere with the respective observances of any religion in India and must leave them to be altered by the processes of internal reform which each religion must undergo under modern conditions. (See Raja Rajendralala Mitra's "Indo-Aryans" Vol. I, Ch. VI for Ancient India.) In pleading for the general acceptance of these Unity resolutions, I would repeat the truest and wisest of Asoka's sayings: "He who does reverence to his own sect while disparaging the sects of others wholly from attachment to his own, with intent to enhance the spendour of his own sect, in reality by such conduct inflicts the severest injury on his own sect." If there are moments when we are inclined to resist Asoka's teaching of religious tolerance, we cannot do so when, from the divine lips of Lord Krishna, we hear it as the sublime message of spiritual identity:

येऽप्यन्यदेवता भक्ता यजन्ते श्रद्धयान्विताः ।
तेऽपि मामेव कौन्तेय यजन्त्यविधिपूर्वकम् ॥

"Even those, O son of Kunti! who being devotees of other Gods worship with faith, worship me only, though irregularly."

Appendix B contains my proposals—they were published a month ago—for the solutions of the communal questions in the Province of Madras which may possibly have even a wider application. In them, I have adopted the principle of perfect equality of all castes as the golden mean between a formal total abolition of all castes which may not yet be practicable and the maintenance of a crumbling hierarchy of castes which is no longer possible.

In conclusion, I would only remind my countrymen of Lord Birkenhead's insolent challenge to us in 1925, not

"to shrink from the conclusive test." And with him, too, I would say, but in a far different spirit from his :

> "He either fears his fate too much ;
> "Or his deserts are small,
> "Who dares not put it to the touch,
> "To win or lose it all."

12th Dec. '27. S. SRINIVASA IYENGAR.

SWARAJ CONSTITUTION

SWARAJ CONSTITUTION

PREAMBLE

Whereas Swarajya or Self-Government is the inherent and inalienable right of the people of India, and their right of self-determination was solemnly recognised by the Prime Minister of England on behalf of the British Government on the occasion of the Great War when India was called upon to make and made heavy sacrifices in men and money, whereas the people of India have protested, without redress, againt the Government of India Act 1919 as altogether inadequate and unsatisfactory and have been incessantly demanding without any satisfactory response a Swaraj Constitution for India, whereas the Indian Legislative Assembly by its resolutions dated the 18th February, 1924 and 8th September, 1925 requested the Government to take steps to establish full· responsible government in India and to summon a representative Round Table Conference or Convention to frame a detailed scheme of a Constitution for India, whereas the British Government have not only refused to accede to all or any of the said demands but have denied the right of the people of India to self-deter-

mination and have further constituted, in defiance of the will of the people, a Commission to report as to whether and to what extent it is desirable to establish in India responsible government or to extend, modify or restrict the degree of responsible government existing in India, and whereas, in order to secure to themselves and their posterity the blessings of liberty, to insure domestic tranquillity and to promote the general welfare, it is necessary to establish full responsible government in India; the people of India acting through the scheduled political bodies and associations and in exercise of their right of self-determination have finally resolved to, and do hereby, ordain and establish the following Swaraj Constitution for India and do further hereby enter into a solemn league and covenant amongst themselves to carry it into effect by all peaceful and legitimate means:—(Cf U. S. preamble.)

PART I

I. DECLARATION OF RIGHTS

1. (1) India shall have the same constitutional status in the community of Nations forming the British Commonwealth of Nations, as the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa and the Irish Free State, with a Parliament having power to make laws for the peace, order and good government of India, and an Executive responsible to that Parliament, and shall be styled and known as the Commonwealth of India. (Art. 1 of the Irish Constitution.)

(2) Nothing herein contained shall affect the right of India as a self-governing dominion to remain now and always the sole judge of the nature and extent of her co-operation with the other communities associated with her as members of the British Commonwealth of Nations or the right of the people of India to claim the fullest national independence in case no settlement is agreed to by the British Government on the basis of this Constitution.

2. In the matter of defence, India shall have exactly the same constitutional position, the same powers and the same rights and obligations as other self-governing dominions:

Provided that nothing herein contained shall affect any treaty or arrangement in that behalf that may become to, or that may be recognised as subsisting, between the Parliament of India and the Government of the United Kingdom.

3. The powers of the Parliament and the Executive Government of the Commonwealth with respect to Foreign Affairs shall be the same as those exercised by the other self-governing Dominions. (I. L. P. draft.)

4. (1) The powers of the Parliament and of the Governor-General in Council with respect to Indian States shall be the same as those exercised by the Parliament of the United Kingdom or by the King in Council or by the Governor-General in Council or by the Governor-General or by all the said authorities at the establishment of this Constitution.

(2) Subject as aforesaid and subject to the powers hereinafter conferred on the Parliament, nothing herein contained shall affect the provisions of the existing Treaties and Arrangements between His Majesty and any Indian States. (§ 132 Govt. of India; Whyte p. 313.)

5. All powers of Government, and all authority, legislative, executive and judicial, are derived from the people and the same shall be exercised in the Commonwealth of India through the organisations established by or under, and in accord with, this Constitution. (Art. 2 of the Irish Constitution.)

6. All laws made by the Parliament shall be binding on the Courts, Judges and people of every Province and of every part of the Commonwealth, notwithstanding anything in the laws of British India or any part of British India or in any Act of the United Kingdom extending to British India, and the laws of the Commonwealth shall be enforced in all Indian territorial waters. (Prelim. § 5 Austr.)

7. The right of the citizens of the Commonwealth to form a well regulated militia for its defence is declared and guaranteed. (2nd Amendment to the American Constitution.)

8. The national language of the Commonwealth is the Hindustani language, but the English language shall be equally recognised as an official language. Nothing in this section shall prevent special provisions being made by Parliament for Provinces, districts or areas in which

neither or either only is in common use. (Art. 4 of the Irish Constitution.)

9. Every person domiciled in the Commonwealth of India at the time of the coming into operation of this Constitution who was born in India or who has been so domiciled in the area of the jurisdiction of the Commonwealth of India for not less than seven years is a citizen of the Commonwealth of India and shall, within the limits of the Commonwealth, enjoy the privileges and be subject to the obligations of such citizenship, provided that any such person being a citizen of another State may elect not to accept the citizenship hereby conferred; and the conditions governing the future acquisition and termination of citizenship in the Commonwealth of India shall be determined by Act of Parliament. (Art. 3 of the Irish Constitution.)

10. No title of nobility or honour in respect of any services rendered in or in relation to the Commonwealth of India may be conferred on any citizen of the Commonwealth of India except with the approval or upon the advice of the Executive Council of the Commonwealth; or, in the case of members of the Executive Council, except with the consent of the Legislative Assembly; nor shall any present, emolument, office, or title conferred by the British or any foreign Government be accepted by a citizen of the Commonwealth employed by the government of the Commonwealth or of a province or holding any office of profit, honour, or trust under them, except with the consent of the Legislative Assembly. (Art. 5 of the Irish Constitution; sec. IX U. S. Cons.)

OR

(1) Privileges or discrimination due to birth or rank and heretofore recognized by law are hereby abolished.

(2) Titles may be conferred only when they designate an office or profession; but academic degrees shall not be affected by this provision.

(3) Orders and honorary insignia shall not be conferred on the citizens of the Commonwealth.

(4) No citizen of the Commonwealth shall accept a title or order or other distinction or office of profit, emolument, or reward from either the British Government or a foreign government. (Art. 109 of the German Republican Constitution.)

11. No person shall be deprived of his liberty nor shall his dwelling or property be entered, sequestered or confiscated, save in accordance with law and by a duly constituted Court of Law. (Art. 6 Irish Constitution, 5th Amendment to American Constitution, 6 Hals. Sec. 557.)

12. The right of free expression of opinion, as well as the right to assemble peaceably without arms, and to form associations or unions, is hereby guaranteed for purposes not opposed to public order or morality, or the law relating to defamation for the time being. (Art. 9 of the Irish Constitution and 1st Amendment, American Constitution; I. L. P. Draft.)

13. (1) Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, hereby guaranteed to every person. (Art. 8, Irish Constitution and 1st Amendment, American Constitution.)

(2) The Commonwealth shall not allow any community, caste or sect in India to impose its religious views or obligations upon any other community, caste or sect.

(3) There shall be no state religion for the Commonwealth of India or for any province in the Commonwealth. No law may be made either directly or indirectly to endow any religion, or prohibit or restrict the free exercise thereof, or give any preference, or impose any

disability on account of religious belief or religious status, or affect prejudicially the right of any child to attend a school receiving public money without attending the religious instruction at the school, or make any discrimination as respects state aid between schools under the management of different religious denominations, or divert from any religious denomination or any educational institution any of its property except for the purpose of roads, railways, lighting, water or drainage works or other works of public utility, and on payment of compensation. (Art.8, Irish Constitution and 1st Amendment, American Constitution.)

(4) No Bill, Resolution, Motion or Amendment regarding inter-communal matters shall be moved, discussed or passed in any legislature, central or provincial, if a three-fourths majority of the members of any community affected thereby in that legislature oppose the introduction, discussion or passing of such Bill, Resolution, Motion or Amendment. (A.I.C.C Resolution, May, 1927.)

14. (1) All citizens of the Commonwealth of India shall be in all respects equal before the law and shall enjoy the same civil and political rights. And no distinction of Court or Judge shall be made between one class of persons and another with respect to similar civil or legal matters and offences. (I. L. P. Draft.)

(2) There shall be no disqualification or disability on the ground only of sex. (Ir. F. S. Art. 3.)

(3) All persons have an equal right to the use of roads, Courts of Justice and all other places of business or resort dedicated to the public, provided they do not disturb public order or disobey any lawful notice issued by a competent authority. (I. L. P. Draft.)

(4) All persons in the Commonwealth of India have the right to free elementary education, and such right shall be enforceable as soon as due arrangements shall

have been made by the competent authority. (I. L. P. Draft ; Ir. F. S. 10.)

15. Differences of religion, creed, faith or language shall not prejudice any citizen of the Commonwealth of India in any way, within the limits laid down by the general laws particularly in regard to public employments, offices of power or honour and the exercise of any trade or calling. (vide Czecho Slovakian Constitution and Sec. 96, Government of India Act.)

16. (1) All castes are hereby declared and guaranteed to be on a footing of perfect equality; no superiority or inferiority of any caste and no hierarchy of castes shall be recognised or given effect to by the State for any purpose.

(2) The State shall not treat or allow to be treated any community in India as an untouchable community but shall recognise it as having the same status as other communities.

17. A citizen of the Commonwealth, resident in any province, shall not be subject in any other province to any disability or discrimination which would not be equally applicable to him if he were a citizen of the Commonwealth resident in such other province. (Austr. S. 117).

18. All judges shall be independent in the exercise of their functions and subject only to the constitution and the law. A judge shall not be eligible to sit in a legislature and shall not hold any other office or position of emolument. (Ir. F. S. art. 68.)

19. No person shall be tried on any criminal charge without a jury save in the cases of charges in respect of minor offences triable by law before a court of summary jurisdiction. (Art. 71 Ir. F. S. art. 3 (2) U. S.)

Nor shall any person be indefinitely detained in custody or interned in any place except upon a charge and without being brought to trial within a reasonable time before a duly constituted court of law.

PART II

2. THE COMMONWEALTH EXECUTIVE GOVERNMENT

20. The Executive Government of the Commonwealth of India is vested in the King and shall be administered by His Majesty in person or by the Governor-General as his representative in accordance with the law and practice and constitutional usage governing the exercise of such authority in the case of a self-governing dominion. (S. Africa Act. S. 8; British N. America Act S. 9; Irish Free state Art. 50; Austr. Act S. 61; C. f., Govt. of India Act S. 33; 2 Keith, page 950 points out that the South African provision for personal exercise avoids the King's otherwise anomalous position of inferiority in constitutional status to his representative.)

21. The Governor-General of India shall be appointed by the King in like manner as the Governor-General of Canada and in accordance with the practice observed in the making of such appointments and shall have and may exercise in India during the King's pleasure, but subject to this constitution, such powers and functions of the King as His Majesty may be pleased to assign to him. (Sec. 2 Austr.; S. 9 S. Africa Act; Irish Free State S. 58.)

22. The provisions of this Constitution relating to the Governor-General extend and apply to the Governor-General for the time being or such person as the King may appoint to administer the Government of India. (S. 4. Aust; Ss. 10 and 14 Br. N. America Act; S. 11 S. Africa Act.)

23. (1) There shall be an Executive Council of India to aid and advise the Governor-General in the Government of India. (Irish Free State Art. 50; Austr. S. 62; S. Africa Act Ss. 12 and 14; Br. N. America Act, S. 11.)

(2) The Executive Council shall consist of not less than five and not more than nine Ministers of the Commonwealth (of State for India) appointed, (from amongst

members of the Parliament), by the Governor-General to administer such departments of State as the Parliament may establish or in the absence of such provision as the Governor-General directs. (Irish Free State Art. 50; Austr. Ss. 64 and 65; S. Africa Act S. 14; Government of India Act S. 52.)

(3) Every Minister so appointed shall hold office during the Governor-General's pleasure: provided that no Minister shall hold office for a longer period than 3 months unless he is or becomes a member of the Senate or the Legislative Assembly. (Govt. of India Act S. 52 makes it 6 months; S. Afr. S. 14 and Austr. S. 64 make it 3 months.)

(4) In appointing the Ministers, the Governor-General shall select one as the Prime Minister and appoint the others only on his advice.

(5) Every Minister shall receive such salary as may be provided by vote of the Parliament.

24. (1) The Prime Minister shall be the President of the Executive Council of India. (See Art. 51 Irish Free State Constitution).

(2) If any difference of opinion arises on a question brought before a meeting of the Executive Council, the decision of the majority of the members present shall prevail and if they are equally divided the Prime Minister or other Minister presiding shall have a second or casting vote.

(3) The Executive Council may make rules and orders for the more convenient transaction of its business subject to the approval of the Governor-General and every order made, or act done in accordance with those rules and orders shall be treated as being the order or the act of the Government of India. (C. f. Government of India Act S. 40 (2) and S. Africa Act S. 82.)

(4) All orders or other proceedings of the Government of India shall be expressed to be made by the

Governor-General in Council and shall be signed by a Secretary to the Government of India or otherwise as the Governor-General in Council may direct. (Govt. of India Act S. 40 (1).)

25. (1) The members of the Executive Council shall be collectively and severally responsible to the Parliament for every legislative and executive act of the Government, for its general policy and for its measures.

(2) A Minister of State shall be responsible to the Parliament for the advice which he gives to the Governor-General, for the administration of the department over which he presides and for acts done under his authority. (7 Hals. paragraphs 70 and 107; Irish Free State Art. 54; 1 Keith Ch. 7;)

(3) The Prime Minister and the other Ministers when they do not retain the confidence of a majority in the Legislative Assembly shall either retire from office or advise the Governor-General to dissolve the Assembly; but shall in either case continue to carry on their duties until their successors have been appointed. (Ir. F. S. Art. 21; I. L. P. Draft.)

OR

The Ministers shall be severally responsible to the Parliament for the conduct of their own departments and shall be jointly responsible to the Parliament for the general policy of the Government. (1 Lowell's Govt. of England, page 73.)

26. (1) The Governor-General may appoint from amongst the members of the Parliament, parliamentary secretaries who shall hold office during his pleasure and discharge such duties in assisting the Ministers of State as he may assign to them.

(2) There shall be paid to parliamentary secretaries so appointed such salaries as may be provided by vote of the Parliament.

(3) A parliamentary secretary shall cease to

hold office if he ceases for more than 3 months to be a member of the Senate or the Legislative Assembly as the case may be. (C.f. Govt. of India Act S. 52.)

27. Subject to the provisions of any law passed by the Parliament regulating the classification of the public services in India, the methods of their recruitment, their conditions of service, pay and allowances, and discipline and conduct, the appointment and removal of all officers of the public services in India shall be vested in the Governor-General in Council except in cases and to the extent they are vested by this Constitition or by any Act of Parliament or by a resolution of the Governor-General in Council in the Government of a Province or in any other authority. (Ss. 15 and 83 of S. Africa Act; S. 67 Austr. 96 B (2) Govt. of India Act.)

28. All powers, authorities and functions which at the establishment of this constitution are vested in the Governor-General or the Governor-General in Council shall as far as the same continue in existence and are capable of being exercised after the establishment of this constitution be vested in the Governor-General in Council except such powers and functions as are by this Constitution or may by an Act of the Parliament be vested in some other authority. (c. f. S. 16 of S. Africa Act; S. 70 Austr. Act; S. 12 Br. N. America Act.)

29. (1) Subject to this constitution the superintendence, direction and control of the Military Government of India is vested in the Governor-General in Council and the Command-in-Chief of the Military, Naval and Air forces in India is vested in the Governor-General as the King's Representative. (§ 33 Govt of India, S. Africa S. 17; Austr. § 68; Br. N. Am. act§ 15.)

(2) Without the consent of Parliament the Armed Forces of the Commonwealth shall not be employed beyond the frontiers of India. (Govt. of India § 22.)

(3) All appointments to offices in the Military,

Naval and Air Forces of the Commonwealth and to Commands in India and all promotions in the said services shall be made by the Governor-General in Council or by any other authority in accordance with the rules made by him. (Gov. Ind. § 95.)

30. (1) There shall be established in India a public service commission, consisting of not more than five members, of whom one shall be chairman, appointed by the Governor-General in Council. Each member shall hold office for five years, and may be re-appointed. No member shall be removed before the expiry of his term of office, except by order of the Governor-General in Council. The qualifications for appointment, and the pay and pension (if any) attaching to the office of chairman and member, shall be prescribed by rules made by the Governor-General in Council.

(2) The public service commission shall discharge, in regard to recruitment and control of the public services in India, such functions as may be assigned thereto by rules made by the Governor-General in Council. (Government of India Sec. 96 C.)

31. An auditor-general in India shall be appointed by the Governor-General in Council, and shall hold his office during good behaviour. The Governor-General in Council shall, by rules, make provision for his pay, powers, duties, and conditions of employment, or for the discharge of his duties in the case of a temporary vacancy or absence from duty. (Government of India Sec. 96 D.)

3. THE INDIAN LEGISLATURE

32. The legislative power of the Commonwealth of India shall be vested in the Parliament of India which shall consist of the King, a Senate and a Legislative Assembly. (See Govt. of India Act S. 63; Br. N. America Act S. 17; S. Africa Act S. 19; Austr. S. 1; New Zealand Constitution Act S. 32; and Irish Free State Con-

stitution Act S. 12. The legislature is bicameral in "all the important countries of the world:" Holt p. 47; (2 Bryce pp. 438-9, Lowell); e.g. in France (Art. 1), in Switzerland (Art. 71), in Italy (Art. 3), in the New German Republic (Arts. 20 and 60), and in Norway, Sweden, Holland and Belgium (Holt. p. 50). Also in the United States of America (Art. 1) and the United States of Brazil (Art. 16).

33. The Governor-General shall have the right of addressing the Parliament and may for that purpose require the attendance of the members of both the chambers. (Ss. 63 A (3) and 63 B (3) of the Govt. of India Act; May. p. 539; "the whole Parliament is assembled in one chamber").

34. The Governor-General may appoint such times and places for holding the sessions of the Parliament as he thinks fit on the advice of his Executive Council and may also from time to time by proclamation or otherwise prorogue on the advice of his Executive Council the Parliament and may on like advice and in like manner dissolve the Senate and the Legislative Assembly simultaneously or the latter alone. (S. 20 S. Afr.; S. 5. Austr. and S. 63-D *of Govt. Ind.*)

35. In case of the dissolution of the Parliament or of the Legislative Assembly as the case may be, the writs shall be issued within 10 days from such dissolution.

At a general election the day fixed for receiving nominations shall be the same in all constituencies and all polls shall be held on one day which day shall be not later than 30 days after the date of dissolution and shall be proclaimed a public holiday. The Parliament or the Legislative Assembly as the case may be shall be summoned to meet not later than 30 days after the day appointed for the return of the writs. (Ss. 5 and 12, Austr. Art. 27 Irish Free State; Representation of People Act 1918, S. 21).

36. There shall be a session of the Parliament once

at least (twice at least) in every year so that a period of 12 (6) months shall not intervene between the last sitting of Parliament in one session and its first sitting in the next sessions. (S. 22 S. Afr. and S. 6 Austr)

THE SENATE

37. The Senate shall be composed of members for each province directly elected by the electors of the province according to the principles of proportional representation by the method of the single transferable vote or on the *list system* or by such other method as may be prescribed by the Governor-General in Council in the case of the first general election and thereafter by the senate. Each province shall be either a single constituency or divided into suitable constituencies. (Austr. S. 7; both Irish Free State Art. 31 and S. Africa Act 134 recognise proportional representation for the Senate.)

38. (1) The total number of members of the Senate shall be fixed at one member for each million of the population of the Commonwealth of India as ascertained at the previous census. (American Constitution Art. 2 gives one for every thirty thousand, and the Irish Free State gives not less than one for each thirty thousand and not more than one for each twenty thousand but these relate to the "lower" House.)

(2) The number of members of the Senate elected in the several provinces shall be in proportion to the respective numbers of their population ascertained as aforesaid.

39. (1) Subject to the provisions of sub-section (2) a person is eligible for election as a member of the Senate who,

(*a*) is or has been an elected member of a Provincial Legislative Council or of either chamber of the Indian Legislature constituted under the Government of India Act 1919, or under this constitution.

(*b*) is or has been a non-official President or Chair-

man or Vice-President or Vice-Chairman of a Municipal Council or District Board or a Local Board in any Province;

(*c*) is or has been a Fellow or Honorary Fellow of any University constituted by law in India; or

(*d*) is or has been a Governor of the Imperial Bank of India, or the non-official President or the Vice-President of any Central Bank or Banking Union which is a registered society under Section 2 of the Co-operative Societies' Act; or

(*e*) has done honour to the nation by reason of eminent public services or, because of special qualifications or attainments, represents any great branch of knowledge or important aspect of national life such as Science, Art, Letters, Medicine, Education, Law, Engineering, Agriculture, Commerce, Manufacturing industry or Banking and Finance. The list of persons qualified under clause (e) and resident in each province shall be made by the Executive Council of the Province and laid before its Legislative Council; or

(*f*) is or has been the President or Vice-President of any Chamber of Commerce, Indian or European; or

(*g*) is a retired officer of His Majesty's Indian Army or of the Commonwealth Forces of such rank or distinction as may be prescribed in that behalf by the Governor-General in Council.

(*h*) is a landholder who pays either an annual assessment of not less than rupees three thousand or holds an estate of which the annual income is not less than rupees thirty thousand or is a person who is assessed to income-tax on an income of not less than rupees thirty thousand.

(2) No person shall be eligible as a member of the Senate to represent a constituency unless he is:—

(*a*) not less than 30 years of age; and

(*b*) registered as a voter for the election of members of the Legislative Assembly in any constituency in the

Province. (S. Afr. S. 26; U. S. 3; Br. N. Am. 23; Irish Free State Art. 30 makes the age 35. French law makes it 40.)

40. The term of office of a member of the Senate shall be six years from its first meeting. (Austr. S. 7; but Art. 30 Irish Free State makes it 12 years; S. 63 D Gov. Ind.)

41. (1) As soon as may be after the Senate first meets and after each first meeting of the Senate following a dissolution thereof, the Senate shall divide, by lot, ballot or otherwise, the members elected for each province in two classes as nearly equal in number as practicable and the places of the members of the first class shall become vacant at the expiration of the third year, and the places of those of the second class at the expiration of the 6th year from the beginning of their term of service. And afterwards, the places of the Senators shall become vacant at the expiration of 6 years from the beginning of their term of service. (Austr. S. 13; Irish Free State makes it one-fourth every 3 years, Art. 31; American Constitution Art. 3 makes it one-third every 2 years.)

(2) A person elected to fill a casual vacancy shall continue as member for the remainder of the term of office as above determined.

42. (1) The Senate shall, before proceeding to the despatch of any other business, choose a Senator to be the President of the Senate and as often as the office of the President becomes vacant the Senate shall again choose a Senator to be its President.

(2) There shall be a Deputy President of the Senate who shall preside at meetings of the Senate in the absence of the President and who shall be a member of the Senate elected by it.

(3) A President or Deputy President shall cease to hold office if he ceases to be a Senator. He may be removed from office by a vote of the Senate or he may

resign his office by writing addressed to the Governor-General. (S. Afr S. 27; Austr. S. 17.)

43. Until the Parliament otherwise provides, the presence of at least thirty members of the Senate shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

(In the Australian Senate, the quorum is one-third of the whole number, in the South African it is twelve, in the Canadian it is fifteen; but these Senates are not large. In the House of Lords, the ordinary quorum is three and for divisions on Bills it is thirty.)

THE LEGISLATIVE ASSEMBLY

44. The Legislative Assembly shall be composed of members directly elected by the electors of the several provinces divided into suitable constituencies.

45. (1) The total numbers of members of the Legislative Assembly shall be fixed at not less than one member for each half million of the population of the Commonwealth of India as ascertained at the previous census.

(2) The number of members elected in the several provinces shall be in proportion to the respective numbers of their population ascertained as aforesaid.

46. (1) A person is eligible for election as a member of the Legislative Assembly to represent a constituency, who

(*a*) is not less than 25 years of age; and (present rule)

(*b*) is registered as a voter for election of members of the Legislative Assembly in the constituency or in any other constituency situated in the same Province.

47. Every Legislative Assembly shall continue for 3 years from its first meeting and no longer but may be sooner dissolved by the Governor-General. (Austr. S. 28; S. Afr. S. 45; Govt. Ind. S. 63.)

48. (1) The Legislative Assembly shall, before proceeding to the despatch of any other business, choose a

member to be the President of the Chamber, and as often as the office of the President becomes vacant the Assembly shall again choose a member to be the President. (S. 63 C (1) Govt. Ind.; S. 46 S. Afr. S. 35 Austr.)

(2) There shall be a Deputy President of the Legislative Assembly who shall preside at meetings of the Assembly in the absence of the President and who shall be a member of the Assembly elected by it. (S. 63 C (2) Govt. Ind.)

(3) Any President or Deputy President shall cease to hold office if he ceases to be a member of the Assembly. He may be removed from office by a vote of the Assembly or he may resign his office by writing addressed to the Governor-General. (S. 63 C (4) Govt. Ind.)

49. Until the Parliament otherwise provides, the presence of at least 40 members of the Legislative Assembly shall be necessary to constitute a meeting of the Assembly for the exercise of its powers. (The present rule is 25; the House of commons rule is 40 including the Speaker.)

4. BOTH CHAMBERS

50. Every Senator and every member of the Legislative Assembly shall, before taking his seat, make at a meeting of the chamber of which he is a member an oath or affirmation of his allegiance in the following form:

"I, A. B., having been elected a member of this House, do solemnly swear (or solemnly and sincerely affirm and declare) true faith and allegiance to the Constitution of the Commonwealth of India as established, and that I will be faithful to His Majesty, King George V, his heirs and successors by law, in virtue of the common citizenship of India with Great Britain and her adherence to and co-equal membership of the group of nations forming the British Commonwealth of Nations." (Ir. F. S. 17.)

51. Any meeting of either Chamber of Parliament

may be adjourned by the leave of the Chamber, or in the event of grave disorder or want of quorum, by the person presiding. (Govt. Ind. S. 63 D; May, pp. 52, 204 and 207.)

52. All questions in either chamber shall be determined by a majority of votes of members present other than the presiding member, who shall, however, have and exercise a casting vote in the case of an equality of votes.

53. The powers of either Chamber of the Indian Legislature may be exercised notwithstanding any vacancy in the chamber.

54. If any person is elected a member of both chambers of the Indian Parliament, he shall before he takes his seat in either chamber signify in writing the chamber of which he desires to be a member, and thereupon his seat in the other chamber shall become vacant. (S. 63 E (3) Govt. Ind.)

55. When a vacancy occurs in the case of a member of either chamber by reason of his election being declared void or his seat being declared vacant or by reason of death, resignation, disqualification or failure or inability to attend to duty, the Governor-General shall, until Parliament otherwise provides, by notification in the Gazette call upon the constituency concerned to elect a person for the purpose of filling the vacancy within such time as may be prescribed by him in accordance with law. (present rule.)

56. A member of either chamber may by writing addressed to the President or if there is no President to the Governor-General, resign his seat which shall thereupon become vacant. (Austr. Ss. 19 & 37; S. Afr. Ss. 29 & 48.)

57. A member of either chamber shall be incapable of being elected or of sitting as a member of the other chamber provided that every minister of state shall have the right to sit and speak in the Senate and the Legisla-

tive Assembly but shall vote only in the chamber of which he is a member. (S. 53 S. Afr; S. 43 Austr.)

58. The President and the Deputy President of the Senate and the President and the Deputy President of the Legislative Assembly shall respectively receive such salaries as may be determined by an Act of the Parliament. (S. 63 C (5) Govt. Ind.)

59. (1) The powers, privileges and immunities of the Senate and of the Legislative Assembly and of the members and the committees of each chamber, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom and of its members and committees at the establishment of this constitution. (Austr. S. 49.)

(2) Subject to the rules and standing orders affecting the chamber there shall be freedom of speech in both chambers of the Indian Legislature. No person shall be liable to any proceedings in any court by reason of his speech or vote or notice given in either chamber, or by reason of anything contained in any official report of the proceedings of either Chamber. (S. 67(7) of the Gov. Ind. (1896) A. C at 612; 3 & 4 Vic. C. 9; (1909) 2 K. B. 958.)

60. (1) Each chamber of the Parliament may make rules and orders with respect to the order and conduct of its business and proceedings.

(2) Without prejudice to the generality of the foregoing power, each House of Parliament may make rules and orders with respect to :—

(i) The mode in which its powers, privileges, and immunities may be exercised and upheld.

(ii) The order and conduct of its business and proceedings either separately or jointly with the other House.

(iii) The issue of writs for vacancies.

(iv) The vacation of seats and resignation of members.

(v) Any other matter necessary for the conduct of business therein. (I. L. P. draft.)

(3) Such rules may provide for questions and resolutions on any matter affecting the relations of the Government of the Commonwealth or of a Province with any Indian State and the relations or of one State with another or any matters touching such States or their Rulers which are within the area of powers now exercised in or in connection with such States by the British Parliament, the Governor-General or the Governor-General in Council. (Whyte p. 313.)

(4) Until such rules and orders are made, the rules and orders of the Council of State and the Legislative Assembly at the establishment of this Constitution shall *mutatis mutandis* apply to the Senate and the Legislative Assembly respectively.

(5) If a joint sitting of both chambers of the Parliament is required under the provisions of this constitution, it shall be convened by the Governor-General by message to both chambers. At any joint sitting the President of the Legislative Assembly shall preside and the rules of that Assembly shall as far as practicable apply. (S. 58 of S. Afr.; S. 67 (3) Gov. Ind.)

5. THE POWERS OF PARLIAMENT

61. (1) The Parliament of India shall, subject to this constitution, have full power to make laws for the peace, and good government of India.

(2) Without prejudice to the generality of the foregoing power, the Parliament shall have exclusive power to make laws in relation to all matters coming within the following classes of subjects, namely,

(i) Trade and commerce with other countries and in India and the incorporation of trading, financial or foreign corporations in India. (Austr. 51; B. N. Am. 91; D. R. I (17 & 18).

(ii) Taxation excluding the taxation assigned under this Constitution to the provinces, but so as not to discriminate between provinces or parts of them; but including customs, revenue excises, income-tax, super tax, corporation profits tax, revenue from salt including control of its manufacture and sale; opium including control of its cultivation, manufacture, sale; export duties; excises on cigars, cigarettes and pipe-tobacco. (Austr.51. B. N. Am. 91. D. R. I (11). Tax. Enq. Rep. 376-84.)

(iii) Bounties on the production or export of goods but so that such bounties shall be uniform throughout India. (Austr. 51)

(iv) Borrowing money on the public credit; the assets and property of the Commonwealth; the Public Debt of the government of the Commonwealth. (Austr. 51; B. N. Am. 91; D. R. I. (13)).

(v) Currency, coinage and legal tender. (B. N. Am. 91; Austr. 51; and D. R. I (12))

(vi) Banking and Insurance and Savings Banks; the incorporation of Banks and the issue of paper money and Stock exchanges; (B. N. Am. 91; Austr. 51; German Sec. 1, Art. 7, 14; D. R. I (17 and 14)).

(vii) Bills of exchange, cheques, hundies and promissory notes. (B. N. Am. 91; Austr. 51).

(viii) Shipping and navigation including shipping and navigation on such inland waterways as may be declared by the Governor-General in Council to be of national importance; harbours, major ports, light-houses, beacons, light-ships, buoys. (B. N. Am. 91; Austr. 51; D. R. I (6) & (7)).

(ix) Railways. (B. N. Am. exception (a) to Sec. 92 (10) Austr. 51; S. Afr. Sec. 85. (7); D. R. I (5); and German Sec. 1 (7)).

(x) Aircraft and all matters connected therewith. (D. R. I (5) (b); German Sec. 1 (7)).

(xi) Posts, Telegraphs and Telephones including

wireless installations. (D. R. I (10); B. N. Am. 91; and Austr. 51).

(xii) The Defence of India and all matters connected with the naval, military and air forces of the Commonwealth including militia, Indian Marine Service and any other force raised in India other than military and armed police wholly maintained by the provincial governments; naval and military works and cantonments; schools and colleges for Military, Naval and Air training. (D. R. I. (1); Austr. 51; B. N. Am. 91).

(xiii) Foreign or external relations including relations with States in India and political charges; naturalisation and aliens; passports; and pilgrimages beyond India. (D. R. I (2), (3) & (4); Austr. 51; B. N. Am. 91; German Sec. 1 (6)).

(xiv) Emigration, immigration and inter-provincial migration. (D. R. I (29); and Austr. 51).

(xv) Port quarantine and Marine hospitals. (D. R. I (8); B. N. Am. 91; and Austr. 51);

(xvi) Public services under the government of the Commonwealth; the public service commission of the Commonwealth. (D. R. I. 40 and 45)

(xvii) The Supreme court of India and any other court established by the government of the Commonwealth.

(xviii) Civil law including laws regarding status, contract, property, civil rights and liabilities and civil procedure. (D. R. I. (16); B. N. Am. 92 makes all except status provincial; but uniformity on these is essential; German Sec. 1, Art. 7.)

(xix) Criminal law including criminal procedure and extradition. (D. R. I (30); B. N. Am. 91 (27); German Sec. 1, Art. 7).

(xx) Bankruptcy and Insolvency. (Austr. 51; B. N. Am. 91).

(xxi) Marriage, Divorce and Matrimonial causes;

parental rights, the custody and guardianship of infants; their status and age of majority. (Austr. 51 ; B. N. Am. 91 D. R. I. (16)).

(xxii) Copyright ; Newspapers and books ; patents of inventions and designs and trade-marks. (D. R. I (27) & (28) ; B. N. Am. 91 ; and Austr. 51).

(xxiii) Land acquisition in or outside India for the purposes of the government of the Commonwealth. (D. R. II (15) makes it provincial but subject to Indian legislation).

(xxiv) Regulation of the registration of deeds and documents excluding its administration in the provinces. (D. R. II 21)

(xxv) The rights and duties of religious communities and of religious associations. (German Sec. 1 Art. 10).

(xxvi) The regulation of the registration of births, deaths and marriages excluding its administration in the provinces. (D. R. II. 22)

(xxvii) Problems of population including census and statistics ; protection of maternity and infancy. (German Sec. 1, Art. 7.)

(xxviii) Control of arms and amunition. (D. R. I 32).

(xxix) The standards of weights and measures. (Austr. 51. B. N, Am. 91 ; D. R. II (29) makes it provincial subject to Indian legislation as to standards.)

(xxx) Fisheries in Indian waters beyond territorial limits (Austr. 51).

(xxxi) Survey of India ; geological survey; and astronomical and meteorological observations. (D. R. I (35) (24) (38) ; Austr. 51).

(xxxii) Commonwealth agencies and institutious for research for professional or technical training and for promotion of special studies. (D. R. I. (33)).

(xxxiii) Chiefs' Colleges and any institution main-

tained by the government of the Commonwealth for the benefit of the members of the forces of the Commonwealth. (D. R. I. 5).

(xxxiv) Parliamentary elections. (D. R. II. 44 makes it provincial.)

(xxxv) Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one province. (Austr. 51).

(xxxvi) The seat of the government of the Commonwealth and all places acquired by the Commonwealth for public purposes and all matters relating to them. (Austr. 52.)

(xxxvii) Inter-provincial matters requiring legislation by the Parliament.

(xxxviii) Administration of Provinces or territories directly under the government of the Commonwealth and all laws and matters relating to them.

(xxxix) The service and execution throughout India of the Civil and Criminal process and the judgments of the courts of the Provinces: and the recognition throughout India of the laws, the public acts and record and the judicial proceedings of the Provinces. (Austr. 51.)

(xl) Matters in respect of which this constitution makes provision until the Parliament otherwise provides or subject to the power of the Parliament. (Austr. 51.)

(xli) Matters incidental to the execution of any power vested by this constitution in the Parliament or in either chamber thereof, or in the Government of India. (Austr. 51).

(xlii) All other matters not assigned by this constitution to the Legislatures of the Provinces.

(3) The validity of any Act of the Parliament shall not be open to question in any legal proceedings on the ground that the Act affects indirectly, or inferentially only, a Provincial subject.

62. The Parliament shall have exclusive power to make laws:—

(*a*) for all subjects of His Majesty and servants of the Crown within the territories of any State whatever in India;

(*b*) for all citizens of the Commonwealth without and beyond as well as within India;

(*c*) for the government officers, soldiers, airmen and followers in His Majesty's Indian forces, wherever they are serving, in so far as they are not subject to the English Army Act or the Air Force Act; and

(*d*) for all persons employed or serving in or belonging to the Indian Marine Service. (S .65 (1) Gov. Ind.)

63. (1) Subject to this constitution, each House of Parliament may make rules for, (a) the qualification of electors, the constitution of constituencies, the number of members for each constituency, the method of election for the chamber and any matters incidental or ancillary thereto; (b) the final decision of doubts or disputes as to the validity of an election; and (c) the manner in which the rules are to be carried into effect: Provided that the effect of such rules is not to increase the total number of members for each province as ascertained with reference to the provisions of this constitution. (cf. S. 64 (1) C. Gov. Ind.

(2) (*a*) The Parliament may by Act, Resolution or Motion admit any Ruler or Rulers of Indian States or their Ministers or delegates as members of the Senate:

Provided that the number of such Rulers, their Ministers or delegates in the Senate at any time shall not exceed the figure computed at one member for each million of the population of Indian States as ascertained in the previous census.

(*b*) The Parliament may by an Act, subject to such conditions, electoral qualifications and disqualifications as it may lay down, confer upon the subjects of

any Indian State or States with the consent of the Ruler or Rulers concerned, the right to elect, and be elected as, members of the Legislative Assembly.

(*c*) The number of members assigned to the subjects of an Indian State shall be fixed at one member for each half-million of its population:

Provided that where the population of a State is less than half a million, Parliament may group together two or more states for the purpose.

64. The Parliament may repeal or alter any Act of the British Parliament relating to or applicable to India or any laws made by any of the legislative authorities in India which may be in force at the time of the commencement of the constitution. But the Parliament shall not unless expressly authorised by this constitution have power to make any law repealing, altering or affecting any Act of the Legislature of any province that may be made after the commencement of this constitution.

65. The Parliament may enact all such provisions as may be necessary or desirable to supplement or to give effect to the provisions of this Constitution but so as not to be inconsistent with them nor so as to derogate from the rights, powers and status of the provinces.

66. It shall not be lawful, without the previous sanction of the Governor-General in Council to introduce at any meeting of either chamber of the Parliament any measure affecting:—

(*a*) the public debt or public revenues of India or imposing any charge on such revenues; or

(*b*) the religion or religious rites and usages of any class of men in India; or

(*c*) the discipline or maintenance of any part of the Military, Naval or Air-Forces or other forces of the Commonwealth; or

(*d*) the relations of the Government with foreign or

Indian rulers or states or with a Provincial Government. (S. 67 (2) Gov. Ind.)

67. (1) The estimated annual expenditure and revenue of the Government of India shall be laid in the form of a statement before both chambers of Parliament in each year. (Govt. of India Act S. 67 (1))

(2) The Legislative Assembly shall as soon as possible thereafter consider such statement and, save in so far as may be provided by specific enactment in each case, the legislation required to give effect to the budget of each year shall be enacted within that year. (Irish Free State Art. 35.)

(3) The proposals of the Governor-General in Council for the appropriation of revenue and other moneys of the Government of India in any year shall be submitted to the vote of the Legislative Assembly in the form of demands for grants. (Govt. of India Act S. 67 A (5) and 72 D (2).)

(4) The Assembly may assent or refuse its assent to any demand or may reduce the amount therein referred to either by reduction of the whole grant or by the omission or reduction of any of the items of expenditure of which the grant is composed. (Govt. of India Act S. 67 A (6) and S. 72 D (2).)

68. (1) Any money Bill shall originate only in the Assembly, but no Bill shall be deemed to be a money Bill by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalities or for the demand or payment of fees for licences or fees for services under such Bill,

Explanation:—A money Bill means a Bill which in the opinion of the President of the Assembly contains only provisions dealing with all or any of the following subjects, namely the imposition, repeal, remission, alteration or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on public

revenue or monies, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising of any loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them. In this definition, the expression "Taxation", "Public Money" and "Loan" respectively do not include any taxation, money or loan raised by local authorities or bodies for local purposes. (Irish Free State Art. 34 and Parliament Act 1911: c.f. S. 60(1); Austr. S. 53; and B. N. Am. S. 53.)

(2) A Money Bill passed by the Assembly shall be sent to the Senate for its recommendations and it shall be returned not later than 14 days therefrom to the Assembly which may pass it accepting or rejecting all or any of the recommendations of the Senate; and the Bill so passed shall be deemed to have been passed by both chambers. (Irish Free State Art. 37; Parliament Act 1911 S. 1; c. f. S. Afr. S. 60 (2); Austr. 53.)

(3) No vote, motion, resolution or Bill for the appropriation of any revenues or other moneys for any purpose shall be passed except upon the recommendation of the Governor-General communicated to the Legislative Assembly in the same session. [Govt. of India Act S. 67 A (2); Irish Free State Art. 36; B. N. Am. 54; Austr. S. 56; S. Afr. S. 62.]

69. (1) Except as provided in the last preceding section, any Bill may be initiated in either chamber and the Senate shall have equal power with the Assembly in respect of all Bills. (Irish Free State Art. 37, 38; c. f. Austr. S. 53).

(2) A Bill passed by either chamber and accepted by the other chamber either without amendments or with such amendments as are agreed to by the two chambers shall be deemed to be passed by both chambers.

70. If any Bill which has been passed by one chamber is not within 3 months after the passage of the Bill by

that chamber passed by the other chamber, either without amendments or with such amendments as may be agreed to by the two chambers, the Governor-General may convene a joint sitting of both chambers. The members present at any such joint sitting may deliberate and vote together upon the Bill as last proposed and upon amendments, if any, which have been made therein by one chamber and not agreed to by the other. And if the Bill with the amendments, if any, is passed by a majority of the members of the Senate and the Assembly present at such sitting, it shall be deemed to have been duly passed by both chambers. [Govt. of India Act, S. 67 (3); S. Africa S. 63; Austr. S. 57; Irish Free State Art. 37 only permits debating but not voting at joint sitting.]

71. When a Bill has been passed by both chambers of the Parliament, the Governor-General may declare that he assents to the Bill or that he withholds assent from the Bill or that he reserves the Bill for the signification of the King's pleasure thereon: provided that the Governor-General shall in withholding his assent to or reserving the Bill as aforesaid act in accordance with the constitutional practice applicable thereto in self-governing dominions. [Govt. of India Act. S. 68 (1); Irish Free State Art. 40; Austr. Act. S. 58; S. Africa S. 64; B. N. Am. S. 55.]

72. A Bill passed by both chambers shall not become an Act until the Governor-General has declared his assent thereto or in the case of a Bill reserved for the signification of His Majesty's pleasure until His Majesty in Council has signified his assent and that assent has been notified by the Governor-General. (Govt. of India Act S. 68 (2))

73. The King may disallow any act of the Parliament of India within six months from the Governor-General's assent and, on such disallowance being notified by the Governor General, the Act, as from the date of notifica-

tion, shall become void. (Govt. of India Act. S. 69; S. Afr. S. 65; Austr. S. 59; B. N. Am. S. 59.)

6. THE JUDICATURE

74. There shall be a Supreme Court which shall exercise such jurisdiction as Parliament shall determine. The Supreme Court shall consist of a Chief Justice, and so many other Justices, not less than two, as Parliament prescribes. (Austr. S. 71.)

75. The Justices of the Supreme Court:—

(i) shall be appointed by the King;

(ii) shall not be removed except by the King on an address from both Houses of Parliament in the same session, praying for such removal on the grounds of proved misbehaviour or incapacity;

(iii) shall receive such remuneration and pensions as Parliament may fix; but the remuneration of a Justice shall not be increased or diminished during his continuance in office.

Any such Justice may resign his office to the Governor-General in Council (S. 102Government of India. Austr. S. 72.)

76. The Supreme Court shall have jurisdiction, with such exceptions and subject to such regulations as Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders and sentences:—

(i) of any Justice or Justices exercising the original jurisdiction of the Supreme Court;

(ii) of the High Court of any Province, or of any other Court of any Province from which at the commencement of this constitution an appeal lies to the King in Council. (Austr. S. 73.)

The judgment of the Supreme Court in all such cases shall be final and conclusive and shall not be reviewed or capable of being reviewed by any other court, tribunal or authority whatsoever. (I. L. P.)

But no exception or regulation prescribed by Par-

liament shall prevent the Supreme Court from hearing and determining any appeal from the High Court of a Province in any matter in which, at the establishment of this constitution an appeal lies from such High Court to the King in Council.

Until Parliament otherwise provides, the conditions of and restrictions on appeals to the King in Council from the High Courts of the several Provinces shall be applicable to appeals from them to the Supreme Court. (Austr. S. 73.)

77. (a) No appeal shall be permitted to the King in Council from a decision of the Supreme Court upon any question, howsoever arising, as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any Province or Provinces, or as to the limits *inter se* of the constitutional powers of any two or more Provinces, unless the Supreme Court shall certify that the question is one which ought to be determined by the King in Council.

(b) The Supreme Court may so certify if satisfied that for any special reason the certificate should be granted, and thereafter an appeal shall lie to the King in Council on the question without further leave.

(c) Parliament may make laws limiting the matters in which such leave may be asked, provided that such laws do not impair any right which the King may be pleased to exercise by virtue of His Royal prerogative to grant special leave of appeal from the Supreme Court to the King in Council. (Austr. S. 74.)

78. The Supreme Court shall have original jurisdiction in all matters—

(i) arising under any treaty;

(ii) affecting consuls or other representatives of other countries;

(iii) in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party;

(iv) in which a writ of mandamus or prohibition or injunction is sought against an officer of the Commonwealth. (Austr. S. 75.)

79. Parliament may make laws conferring original jurisdiction on the Supreme Court in any matter:—

(i) arising under this Constitution or involving its interpretation;

(ii) arising under any laws made by Parliament;

(iii) of Admiralty and maritime jurisdiction;

(iv) relating to the same subject-matter claimed under the laws of different Provinces.

(v) between Provinces or residents of different Provinces, or between a Province and a resident of another Province. (Austr. S. 76)

80. With respect to any of the matters mentioned in the last two sections, Parliament may make laws:—

(i) defining the jurisdiction of any court, other than the Supreme Court;

(ii) defining the extent to which the jurisdiction of any such court shall be exclusive of that which belongs to or is invested in the courts of the Provinces.

81. Parliament may make laws conferring rights against the Commonwealth or a Province in respect of matters within the limits of the judicial power. (Austr. S. 78.)

82. The jurisdiction of any court may be exercised by such number of judges as Parliament may prescribe.

83. (1) Any dispute between any two provinces or between a province or provinces and the Commonwealth relating to their boundaries, jurisdictions or powers or financial or other relations or any other matters what soever may be referred by the Governments concerned or any of them to the Supreme Court whose decision thereon shall be final and conclusive.

(2) Whenever the validity of an Act of Parliament or of a Provincial Legislature or any of its

provisions is impugned on the ground that the Act or the provision contravenes this constitution or any of its provisions, the Governor-General in Council or the Governor in Council of a Province or the High Court of a province of its motion or at the instance of any Court or person within that province, may state a case thereon to the Supreme Court for its decision which shall be final and conclusive.

(3) The Supreme Court may make rules to carry into effect the provisions of this section.

PART III.

7. PROVINCIAL GOVERNMENT

84. Every Province which is not under the immediate authority of the Governor-General in Council and the Parliament shall be governed by a Governor in Council.

85. The Governor of every such Province shall be appointed by His Majesty by warrant under the Royal Sign Manual after consultation with the Governor-General. (Gov. Ind. Sec. 46 (2)).

86. The Governor as the King's representative in the Province shall have and may exercise therein, during the King's pleasure, but subject to this constitution, such powers and functions as His Majesty may be pleased to assign to him. (1 Keith p. 83 at S. 99; 2 Keith p. 811; (92) A. C. 437.)

87. The provisions of this Constitution relating to the Governor shall extend and apply to the Governor for the time being or such person as the King may appoint to administer the Government of the Province. (Austr. S. 111; Br. N. Am. S. 62.)

88. (1) There shall be an Executive Council of the Province to aid and advice the Governor in the government of the Province.

(2) A Provincial Executive Council shall consist of

not less than three and not more than five ministers for the Province appointed (from amongst the members of the Legislative Council) by the Governor to administer such departments of government, subject to this Constitution, as the Provincial Legislature may establish or, in the absence of such provision, as the Governor directs.

(3) Every minister so appointed shall hold office during the Governor's pleasure: provided that no Minister shall hold office for a longer period than 3 months unless he is or becomes a member of the Legislative Council. (Gov. Ind. S. 52;S. Afr. S. 14 and S. 78 (1); Ausr. 64.)

(4) In appointing the Ministers, the Governor in Council shall select one as the Chief Minister and appoint others only on his advice.

(5) Every minister shall receive such salary as may be provided by vote of the Legislative Council.

89. (1) The Chief Minister shall be the President of the Executive Council of the Province. (See Irish Free state Art. 51. The administrator corresponding to a Governor has no right to vote at meetings of the Provincial executive committee: S. Afr. S. 79.)

(2) If any difference of opinion arises on a question brought before a meeting of the Executive Council, the decision of the majority of the members present shall prevail and, if they are equally divided, the Chief Minister or other Minister presiding shall have a second or casting vote. (S. Afr. S. 82; Gov. Ind. S. 50 (1))

(3) The Executive Council may make rules and orders for the more convenient transaction of its business subject to the approval of the Governor and every order made, or act done in accordance with those rules and orders shall be treated as being the order or the act of the Government of the Province. (S. Afr. S. 82; Government of Ind. 49 (2).)

(4) All orders or other proceedings of the Government of the Province shall be expressed to be made by

the Governor in Council and shall be signed by the Secretary to Government or otherwise as the Governor in Council may direct. (Gov. Ind. S. 49 (1).)

90. (1) The members of the Executive Council shall be collectively and severally responsible to the Legislative Council for every legislative and executive act of the government, for its general policy and for its measures.

(2) A Minister of State shall be responsible to the Legislative Council for the advice which he gives to the Governor, for the administration of the department over which he presides and for acts done under his authority. (7 Hals. paras 70, 107; Ir. F. S., Art. 54; Keith, Ch. 7)

OR

The Ministers shall be severally responsible to the Legislative Council for the conduct of their own departments and shall be jointly responsible to the Legislative Council for the general policy of the Government. (1 Lowell's Government of England, p. 73.)

(3) The Chief Minister and the other Ministers shall either retire from office when they do not retain the confidence of a majority in the Legislative council or advise the governor to dissolve the council. In either case they shall continue to carry on their duties until their successors have been appointed. (Ir. F. S. Art. 21; I. L. P. draft.)

91. (1) The Governor may appoint from amongst the members of the Legislative Council, Council Secretaries who shall hold office during his pleasure and discharge such duties in assisting the Ministers as he may assign to them.

(2) There shall be paid to Council Secretaries so appointed such salaries as may be provided by vote of Parliament.

(3) A Council Secretary shall cease to hold office

if he ceases for more than 3 months to be a member of the Senate or the Legislative Council as the case may be (c. f. Gov. Ind. S. 52.)

92. Subject to this Constitution and to any law passed by the Legislative Council of a province regulating the classification of public services in the Province, the methods of their recruitment, their conditions of service, pay and allowances and discipline and conduct, the appointment and removal of all officers of the public services of the province shall be vested in the Governor in Council unless it is delegated by him or by a law of the provincial Legislature to some other authority.

93. In regard to all such matters as are not within the jurisdiction of the Legislative Council of a Province, the Governor in Council shall act on behalf of the Governor-General in Council when required to do so (S. Afr. S. 84; D. R. 46.).

94. All powers, authorities and functions which at the establishment of this constitution are vested in or exercised by the Governor in Council or by a Governor acting with Ministers shall as far as the same continue in existence and are capable of being exercised after the establishment of this constitution be vested in the Governor in Council except such powers and functions as are by or under this Act, or may by an Act of Parliament, be vested in the Executive Government of the Commonwealth or in some other authority. (S. Afr. S. 81.)

8. PROVINCIAL LEGISLATURE

95. (1) There shall be a Legislative Council in every province except where it is directly subject to the Parliament and the Executive Council of India.

(2) The Governor shall have the right of addressing the Council and may for that purpose require the attendance of its members.

96. The total number of members of the Legislative Council of a Province shall be fixed at not less than one member for each two hundred thousand, and not more than one member for each hundred thousand, of the population of such province as ascertained in the previous census.

97. A person is eligible for election as a member of a Legislative Council to represent a constituency who:—

(*a*) is not less than 25 years of age; and

(*b*) is registered as a voter for election of members of such Legislative Council in the constituency or in any other constituency in the same Province.

98. Every Legislative Council shall continue for three years from its first meeting, and no longer, but may be sooner dissolved by the Governor. (S. 72 B Gov. Ind.)

99. The Governor acting on the advice of his Executive Council may appoint such times and places for holding the sessions of the Legislative Council as he thinks fit and may also from time to time by notification or otherwise prorogue the Council and may in like manner dissolve it. (S. 72 B (2) Gov. Ind.)

100. (1) In case of the dissolution of the Council, the writs shall be issued within 10 days from the notification of such dissolution.

(2) At a general election, the day fixed for receiving the nominations shall be the same in all constituencies and all polls shall be held on one day which shall be not later than 30 days after the date of dissolution and shall be proclaimed a public holiday. (Ir. F. S. 27)

(3) The Legislative Council shall be summoned to meet not later than 30 days after the day appointed for the return of the writs.

101. There shall be a session of the Legislative Council twice at least in every year so that a period of 6 months shall not intervene between the last sitting of the Council in one session and its first sitting in the next session.

102. (1) The Legislative Council shall, before proceeding to the despatch of any other business, choose a member of the Council to be the President and as often as the office of the President becomes vacant, the Council shall again choose a member to be its President.

(2) There shall be a Deputy President of the Legislative Council who shall preside at meetings of the Council in the absence of the President and who shall be a member of the Council and elected by it.

(3) A President or Deputy President shall cease to hold office if he ceases to be a member. He may be removed from office by a vote of the Council or he may resign his office by writing addressed to the Governor.

(4) The President and Deputy President shall receive respectively such salaries as may be determined by an Act of the Legislature of the Province. (S. 72 C. Gov. Ind.)

103. Until the Legislative Council otherwise provides, the presence of at least 30 members of the Council shall be necessary to constitute a meeting of the Council for the exercise of its powers.

104. Any meeting of the Legislative Council may be adjourned with the leave of the Council or, in the event of grave disorder or for want of quorum, by the person presiding. (S. 72 B (3) Gov. Ind.)

105. All questions in a Legislative Council shall be determined by a majority of votes of the members present, other than the person presiding, who shall, however, have and exercise a casting vote in the case of an equality of votes. (S. 72 B (4) Gov. Ind.)

106. The powers of a Legislative Council may be exercised notwithstanding any vacancy in the Council.

107. Every person who is elected a member of the Council shall before taking his seat make at a meeting of the Council an oath or affirmation of his allegiance in the following form:

"I, A. B., having been elected a member of this House,

do solemnly swear (or solemnly and sincerely affirm and declare) true faith and allegiance to the Constitution of the Commonwealth of India as established, and that I will be faithful to His Majesty, King George V, his heirs and successors by law, in virtue of the common citizenship of India with Great Britain and her adherence to and co-equal membership of the group of nations forming the British Commonwealth of Nations."

108. A member may, by writing addressed to the President or if there is no President to the Governor, resign his seat which shall thereupon become vacant.

109. When a vacancy occurs in the case of a member of a Legislative Council by reason of his election being declared void or his seat being declared vacant or by reason of death, resignation or disqualification of failure or inability to attend to duty, the Governor, until the legislative council otherwise provides, shall by notification in the Gazette call upon the constituency concerned to elect a person for the purpose of filling the vacancy within such time as may be prescribed by him (in accordance with law).

110. (1) Until it otherwise provides, the powers, privileges and immunities of a provincial legislative council and of the members and committees of the House shall be those enjoyed by the British House of Commons and by its members and committees at the time of coming into operation of this constitution. (Austr. 49).

(2) Subject to the rules and standing orders affecting the council there shall be freedom of speech in a Legislative Council. No person shall be liable to any proceedings in any court by reason of his speech or vote or notice given in any such Council or by reason of anything contained in any official report of the proceedings of any such council. (Gov. Ind. 72 D. (7))

111. (1) Every Legislative Council may from time

to time make rules and orders with respect to the order and conduct of its business and proceedings.

(2) Without prejudice to the generality of the fore-going power, each provincial Legislative Council may make rules and orders with respect to

(i) the mode in which its powers, privileges and immunities may be exercised and upheld ;

(ii) the order and conduct of its business and proceedings;

(iii) the vacation of seats and resignation of members ;

(iv) the issue of writs for vacancies.

(3) Until such rules and orders are made the rules and orders in force at the establishment of this constitution shall as far as practicable apply to the Legislative Council.

112. Subject to this constitution, the Legislature of a Province shall have, in and for the territories for the time being constituting that Province, exclusive power to make laws in relation to matters coming within the following classes of subjects, namely,

(1) Land revenue including any income-tax that may be imposed on agricultural income and charges for water; survey and settlement; alienation of land revenue; disposal and colonisation of public lands and management of estates. (D. R. II. r. 8 (a), (b), (f), (g); Br. N. Am. § 92 (2) and 5 ; S. Afr. § 85 (1))

(2) Excise, that is to say, the control of manufacture, possession, purchase and sale of alcoholic liquor and intoxicating drugs except opium and the levying of excise duties and license fees for or in relation to such articles ; and other restrictive excises. (D. R. II. r. 16 ; Br. N. Am. § 92 ; Tax. Enq. p 577)

(3) Taxes on transactions other than those levied under the Stamp Act ; fees including court-fees ; revenue

from the licensing of the sale of tobacco; probate duties; succession or estate duties. Tax. Enq. Rep. 378)

(4) All local taxation, such as tolls, taxes or cesses on land or land values; tax on buildings, tax on vehicles or boats; tax on animals; octroi and a terminal tax on goods imported into or exported from a local area; tax on trades, professions and callings; tax on private markets; tax on advertisements; tax on amusements or entertainments; tax on gambling; taxes imposed in return for services rendered by the local authority. (Sch. Tax Rules.)

(5) Land acquisition by and within the Province.

(6) Forests and preservation of game. (D. R. 2, r. 14; B. N. Am. S. 92 (5).)

(7) Agriculture including research institutes, experimental and demonstration farms, protection against destruction of insects and pests. (D. R. 2, r. 10; S. Africa 85 (iv).)

(8) Fisheries excluding Commonwealth Fisheries. (D. R. 2, r. 12; S. Africa 85 (x); Austr. 51 (x); but otherwise B. N. Am. 91 (12).)

(9) Water-Supplies, Irrigation, Canals, Drainage and Embankment, Water Storage and Water-Power, except where they involve matters of inter-provincial concern or affect the relations of a Province with an Indian State or any other territory. (D. R. 2, r. 7.)

(10) Public Works and Undertakings within the province including Buildings, Roads, Bridges, Ferries, Tunnels, Ropeways, Causeways, Tramways, Inland Waterways, and other means of communication except:

(a) Railways and Harbours; and

(b) all such works as extend beyond the borders of the Province; and

(c) subject to the power of the Parliament to declare any work (although wholly situate within the Province) a national work and to provide for its construc-

tion by arrangement with the Government of the Province or otherwise. (D. R. 2, r. 6; B. N. Am. 92 (10 a,b,c); S. Afr. 85 (vii).)

(11) Co-operative Societies. (D. R. 2, r. 13.)

(12) Development of mineral sources including regulation of mines (D. R. 2, r. 24)

(13) Industry, Industrial research, technical education and other industrial matters such as factories, settlement of labour disputes, electricity, gas, boilers, smoke nuisance, welfare of labour including provident fund and industrial insurance and housing. (D. R. 2 rules 25 & 26.)

(14) Famine Relief. (D. R. p. 2, r. 9.)

(15) Pilgrimages within India. (D. R. p. 2, r. 4.)

(16) Local Self-Government including constitution and power of Municipal Corporations, Local Boards, Improvement Trusts, Town-Planning Boards, Mining Boards, Boards of health and other local authorities in the province and Local Fund audit. (D. R. p. 2. r. 1; S. Afr. 85 (vi); B. N. Am. 92 (8).)

(17) Medical administration including hospitals, dispensaries, Asylums and provision for medical education and medical qualifications and standards. (D. R. p. 2, r. 2; B. N. 92 (7) S. Afr. 85 (v))

(18) Public Health and Sanitation. (D. R. p. 2, r. 3.)

(19) Education excluding Chiefs' Colleges and any institution maintained by the Governor-General in Council for the benefit of members of His Majesty's Forces. (D. R. p. 2, r. 5; B. N. Am. S. 93; but S. Afr. 85 (iii) excludes higher education.)

(20) Court of Wards and incumbered and attached estates. (D. R. p. 2, r. 8 d.)

(21) Land Improvement and Agricultural Loans D. R. p. 2 r. 8 e.)

(22) Land Tenures and Landlord and Tenant and Rent Law. (D. R. pt. 2, r. 8.)

(23) Administrator-General and Official Trustees. (D. R. p. 2, r. 19.)

(24) Police, including Military and armed police wholly maintained by the province and Railway Police, subject in the case of the Railway Police to such rules as may be prescribed by the Parliament as to limits of jurisdiction and railway contributions to cost of maintenance. (D. R. p. 2, r. 32.)

(25) Adulteration of food-stuffs and other articles in the province. (D. R. p. 2, r. 28.)

(26) Religious and charitable Endowments.

(27) (*a*) Control of petroleum and explosives. (D. R. I, 23 makes it central.)

(*b*) regulation of betting and gambling ;

( ) prevention of cruelty to animals ;

(*d*) protection of wild birds and animals ;

(*e*) control of motor vehicles ;

(*f*) control of poisons, (D. R. II 33.)

(*g*) control of dramatic performances and cinematographs. (D. R. 2, r. 33.)

(28) Prisons, prisoners and reformatories and criminal tribes and settlements and vagrancy (D. R. p. 2, r. 39.)

(29) Treasure trove. (D. R. p. 2, r. 41.)

(30) Administration of the law and department of registration of deeds and documents. (D. R. II. 21.)

(31) Administration of justice in the province including the constitution, maintenance and organisation of courts of Civil and Criminal jurisdiction. (D. R. 2, 2 r. 50; S. Afr. 85 (xi) ; B. N. Am. 92 (15).)

(32) Elections for the legislature of the Province.

(33) Imposition by legislation of punishments by fine, penalty or imprisonment, for enforcing any law of the province in relation to any matter assigned by or under this or any other section of this Constitution to the Legislature of the Province.

(34) The borrowing of money on the sole credit of

the province; provincial public debt; assets and property of the province.

(35) Any court within the province not being the High Court therein or a court within the jurisdiction of the Government of the Commonwealth.

(36) Provincial institutions for research, for professional or technical training and for promotion of technical studies.

(37) Zoological survey, Botanical survey; Archæology; Historical and ancient monuments.

(38) Administration of the law relating to the registration of births, deaths and marriages. (D.R. II. 22)

(39) Provincial Law Reports.

(40) Minor Ports.

(41) Public Libraries, Museums Zoological and Botanical gardens and Registration of Societies.

(42) Pounds and Prevention of Cattle Trespass.

(43) Civil Veterinary Department including provision for Veterinary training, improvement of stock and prevention of animal diseases.

(44) Coroners.

(45) Provincial Stores and Government presses.

(46) Provincial services and provincial services commission; the seat of provincial government.

(47) Generally, all matters which are of a merely local or private nature within the Province. D.R. 2, r. 51; S. Afr. S. 85 (xii) B. N. Am. 92 (16).)

(48) Matters pertaining to a Commonwealth subject in respect of which powers have been conferred by any other section of this constitution or by or under any act of the Parliament upon Provincial Legislatures of Governments.

113. A provincial legislature may make any law repealing or altering any Act of the British Parliament applicable to India which may be in force in the province at the commencement of this constitution so far as rela-

tes to that province, and shall also have power to make any law repealing or affecting any law of any of the legislatures in India which may be in force at the commencement of this constitution, so far as relates to that province, but it shall not have power to make any law repealing, or affecting any Act of the Parliament that may be made after such commencement.

114. A provincial legislature may establish any such functional or vocational councils representing branches of the social and economic life of the people in the province and any such sub-provincial authorities as it may think fit for the better and more complete development of local self-government, education and public health, with such functions, powers, rights and duties and subject to such conditions as it may lay down. (Ir. F. S. 44; I. L. P. draft. The Irish provision will include a Labour Council.)

115. The Legislative Council of a Province may enact all such provisions as may be necessary or desirable to supplement or to give effect to the provisions of this constitution applicable to the province but not so as to be inconsistent with them nor to affect the rights, powers and property of any other province or of the Commonwealth.

116. Subject to this constitution, the legislature of a province may make rules for the qualifications of electors, the constitution of constituencies, the number of members for each constituency, the method of election for the legislative council and any matters incidental or ancillary thereto; (b) the final decision of doubts or disputes as to the validity of an election; and (c) the manner in which the rules are to be carried into effect:

Provided that the effect of such rules is not to increase the total number of members fixed for each province under this constitution.

117. It shall not be lawful for any member of any

Provincial Legislative Council to introduce without the previous sanction of the Governor in Council any measure affecting the public revenues of a Province or imposing any charge on those revenues. (Govt. of Ind. S. 80 C.)

118. (1) The estimated annual expenditure and revenues of every Province shall be laid in the form of a statement before its Legislative Council in each year. (Govt. of Ind. S. 72 D (2))

(2) The Legislative Council shall, as soon as possible thereafter, consider such statement and, save in so far as may be provided by specific enactment in each case, the legislation required to give effect to the budget of each year shall be enacted within that year. (I. F. S. Art. 35.)

(3) The proposal of the Governor in Council for the appropriation of provincial revenues and other moneys in any year shall be submitted to the vote of the Council in the form of demands for grants. The Council may assent or refuse its assent to a demand or may reduce the amount therein referred to either by a reduction of the whole grant or by the omission or reduction of any of the items of expenditure of which the grant is composed. (Govt. of Ind. S. 72 D (2).)

119. No vote, resolution or bill for the appropriation of any revenues or other moneys for any purpose shall be passed except upon the recommendation of the Governor communicated to the Legislative Council in the same session. (Govt. of Ind. S. 72 D (2) (c).)

120. (1) When a Bill has been passed by a Provincial Legislative Council, the Governor may declare that he assents to or withholds his assent from the Bill or that he reserves the Bill for the consideration of the Governor-General: provided that the Governor shall in withholding his assent to or reserving the Bill as aforesaid act in accordance with constitutional practice applicable thereto in self-governing dominions.

(2) If the Governor withholds his assent from any such Bill, the Bill shall not become an Act.

(3) If the Governor assents to any such Bill he shall forthwith send an authentic copy of the Act to the Governor General and the Act shall not have validity until the Governor General has assented thereto and that assent has been signified by the Governor General to, and published by, the Governor.

(4) Where the Governor General withholds his assent from any such Act, he shall signify to the Governor in writing his reason for so withholding his assent.

(5) Any Bill reserved for the consideration of the Governor General shall, if assented to by him, within a period of 6 months from the date of reservation, become law on due publication of such assent in the same way as a bill assented to by the Governor; but if not assented to by the Governor General within such period of 6 months, shall lapse and be of no effect.

121. The Governor General may (except where the Bill has been reserved for his consideration), instead of assenting to or withholding his assent from any Act passed by a local legislature, declare that he reserves the Act for the signification of His Majesty's pleasure thereon, and in such case, the Act shall not have validity until His Majesty in Council has signified his assent and his assent has been notified by the Governor General. (Gov. Ind. Sections 81 & 81A.)

122. The King may disallow any Act of a Provincial Legislature within six months from the Governor-General's assent and on such disallowance being notified by the Governor, the Act, as from the date of the notification, shall become void. (Govt. of Ind. S. 82. 2. Keith p. 1019.)

9. PROVINCIAL JUDICATURE

123. In each province there shall be a High Court which shall consist of a Chief Justice and as many other Judges as his Majesty may think fit to appoint :

Provided that the maximum number of Judges of a High Court including the Chief Justice and additional Judges shall not exceed fifteen.

124. The Judges shall receive such remuneration and pension as the provincial Legislature may fix, but the remuneration of any Judge shall not be increased or diminished during his continuance in office.

125. (1) Every Judge of a High Court shall hold his office during good behaviour, and may be removed by the King on an address from the provincial Legislature praying for such removal on the grounds of proved misbehaviour or incapacity. (Austr. 72)

(2) Any judge of the High court may resign his office to the governor in council. (§ 102 Gov. Ind.)

126. The several High courts are superior courts of records and have such jurisdiction, original and appellate, and all such powers and authority, over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practice of the court, as are vested in them and, subject to the provisions of their constitution, all such jurisdictions, powers of authority, as are vested in those courts respectively at the time of the coming into operation of this constitution. (Gov. Ind S. 106).

127. Each of the High Courts has superintendence over all courts for the time being, subject to its appellate jurisdiction and may do all or any of the following things.

(i) call for returns ;

(ii) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction ;

(iii) make and issue general rules and prescribe

forms for regulating the practice and proceedings of such courts.

(iv) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and

(v) settle tables of fees to be allowed to the Sheriff, Attorneys, and all clerks and officers of courts:

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force and shall require the previous approval of the provincial Legislature. (Gov. Ind. § 107)

128. (a) Each High Court may by its own rules provide as it thinks fit for the exercise, by one or more judges or by Division Courts constituted by two or more judges of the High Court, of the original and appellate jurisdiction vested in the Court.

(b) The Chief Justice of each High Court shall determine what judge in each case is to sit alone, and what judges of the Court, whether with or without the Chief Justice, are to constitute the several Division Courts. (Gov. Ind. § 108.)

129. The Governor-General in Council may, by order, transfer any territory or place from the jurisdiction of one to the jurisdiction of any other of the High courts, and authorise any high court to exercise all or any portion of its jurisdiction in any part of the commonwealth not included within the limits for which the high court was established, and also to exercise any such jurisdiction in respect of any British subject for the time being within any part of India outside the Commonwealth. (S. 109 (1) Gov. Ind.)

130. (1) The Legislative Council of a Province may by law invest the High Court therein with original or appellate jurisdiction or other powers which are conferred upon courts, in respect of any matter arising within the province and within its own legislative power.

(2) The Parliament may also invest the High Court with jurisdiction or powers in respect of matters within its legislative authority.

10. NEW PROVINCES

131. (1) Parliament shall, as soon as may be, after the coming into operation of the Constitution, and if the same shall be deemed necessary, reconstitute the Provinces on the basis of language groupings. (A. I. C. C. Resoluution; I. L. P. draft.)

(2) The official language of the Legislative Council after the Provinces shall have been reconstituted as aforesaid shall be in the case of each Province, the language most in use in such reconstituted Province, or Hindustani as an alternative; but the English language shall be equally recognised as an official language. (I. L. P. draft; Ir. F. S. art 4.)

132. (1) Parliament may admit to the Commonwealth or establish new Provinces and may, upon such admission or establishment, make or impose such terms and conditions, including the extent of representation in either House of Parliament as it thinks fit. (Austr. 121. as to Canada-34 Vict. C. 28)

(2) Parliament may by an Act it admit to the Commonwealth any Indian State as a new Province on such terms and conditions or in accordance with such treaties as may be entered into between the Governor-General in Council and the State.

133. (1) Parliament may alter the boundaries of any province, divide a province into two or more provinces, or form a new province out of provinces within the commonwealth, on the application and with the consent of the legislative council of every province affected thereby. (S. 149 S. Afr; Austr. 123)

(2) A new province may be formed by separation of territory from a province, but only with the consent of

the legislative council of the province affected. (Austr. 124)

134. Parliament may make laws for the Government of any territory surrendered by any province to, and accepted by, the Commonwealth, or of any other territory otherewise acquired by the Commonwealth, and may allow the representation of such territory in either House of Parliament to the extent and on the terms which it thinks fit. (Austr. 122)

PART IV. GENERAL.

II. FINANCE, TRADE, PROPERTY AND CONRACTS

135. All revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund to be appropriated for the purposes of the Commonwealth in the manner prescribed and subject to the charges and liabilities imposed by this Constitution. (Austr. 81; S. Af. 117; Br. N. Am. ch. viii; Gov. Ind. S. 20.)

136. (1) The expression "the Revenues of the Commonwealth" in this Constitution shall include all the territorial and other revenues of, or arising in, the Commonwealth; and in particular:

(*a*) Customs; export duties; revenue excises; revenue derived from the manufacture, sale and export of opium; salt revenue; excises on cigars, cigarettes and pipe-tobacco; the revenue from non-judicial stamps; and the revenue from income-tax and super-tax and corporation profits tax deducting the share thereof assigned under this constitution to the provinces; and

(*b*) All tributes and other payments in respect of any territories which would have been receivable by or

in the name of the East Indian Company, if the Government of India Act had not been passed.

(2) All property vested or arising or accruing from property or rights vested in His Majesty under the Government of India Act shall be applied in aid of the revenues of the Commonwealth or of the provinces or of both as may be determined by the Parliament. (Gov. Ind. § 20; Rep. Tax. Enq. pp. 376-84)

137. (a) The costs, charges and expenses incident to the collection, management and receipt of the Consolidated Revenue Fund shall form the first charge thereon; and the revenues of the Commonwealth shall in the first instance be applied to the payment of the expenditure of the Commonwealth.

(b) There shall be charged on the revenues of the Commonwealth :

(i) All expenses, debts and liabilities lawfully contracted and incurred on account of the Government of India; and

(ii) all the debts of the East India Company and

(iii) all sums of money, costs, charges and expenses which, if the Government of India Acts had not been passed would have been payable by the East India Company out of the revenues of India in respect of any treaties, covenants, contracts, grants or liabilities existing at the commencement of those Acts and

(iv) all payments except so far as otherwise provided under this Constitution. (Gov. Ind. S. 20.)

138. No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law.

But until the expiration of one month after the first meeting of Parliament the Governor-General in Council may draw from the Treasury and expend such moneys as may be necessary for the maintenance of any department

belonging to the Commonwealth and for the holding of the first elections for Parliament. (Austr. S. 83.)

139. Trade, commerce, and intercourse among the Provinces, whether by means of internal carriage or ocean navigation, shall be free.

140. The Commonwealth shall not, by any law or regulation of trade, commerce or revenue, give preference to one Province or any part thereof over another Province or any part thereof.

141. All revenues or moneys raised or received by the executive government of a Province shall be paid into a Provincial Consolidated Fund of which the Governor in Council shall be the custodian. They shall be appropriated for the purposes of the province in the manner prescribed and subject to the charges and liabilities imposed by this constitution. The following sources of revenue are hereby assigned to the Provincial Government as sources of provincial revenue, namely;

(a) Land revenue including any income-tax that may be imposed on agricultural income and charges for water; taxes on transactions other than those levied under the Stamp Act; fees including court-fees; revenue from the licensing of the sale of tobacco; probate duties and succession or estate duties; restrictive excises; the provincial share of the income-tax, super-tax and corporation profits tax, and any other taxes that may lawfully be imposed for provincial purposes by the provincial government under this constitution or under any Act of the Parliament of the Commonwealth ;

(b) balances standing at the credit of the province at the commencement of this constitution;

(c) receipts accruing in respect of any provincial subject ;

(d) recoveries of loans and advances given by the provincial government and of interest paid on such loans;

(e) payments made to the provincial government by the Governor General in Council or by other provincial governments either for services rendered or otherwise;

(f) the proceeds of any loans which may be lawfully raised for provincial purposes;

(g) all fines and penalties incurred by the sentence or order of any Court of Justice and all forfeitures for crimes, of any movable or immovable property in the province; and

(h) all movable or immovable property in the province escheating or lapsing for want of an heir or successor and all property in the province devolving as *bona vacantia* for want of a rightful owner:

Provided that moneys paid over by the Governor General in Council to the Government of a province for particular purposes shall be appropriated for such purposes only. (Rep. Tax. Enq. pp. 376-8; S. Afr. § 89; Whyte 306-7; D. R. 14; Gov. Ind. § 20)

142. (1) The executive government of the Commonwealth shall, subject to such alterations in the method of apportionment of income-tax as may be made by the Parliament, pay into each Provincial Consolidated Fund the proceeds of such a basic rate as may be agreed upon between the Government of the Commonwealth and the Province on personal incomes graduated proportionately to the general rate. (Rep. Tax. Enq. p. 384; D. R. 15).

(2) The Parliament may, when the revenues of a province are insufficient to meet its requirements, vote a grant of money to the province. (Cf. Austr. 96; Br. N. A. 118)

143. (a) The costs, charges and expenses incident to the collection, management and receipt of the Consolidated Revenue Fund shall form the first charge thereon; and the revenue, of the province shall in the first instance be applied to the payment of the expenditure of the province.

(b) There shall be charged on the revenues of the province:

(i) All expenses, debts and liabilities lawfully contracted and incurred on account of the Government of the province; and

(ii) All provincial payments except so far as otherwise provided under this Constitution.

144. No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law.

But until the expiration of one month after the first meeting of the Legislature the Governor in Council may draw from the Treasury and expend such moneys as may be necessary for the maintenance of any department belonging to the province and for the holding of the first elections for the Legislative Council. (S. Afr. 89)

145. The Legislature of a Province may itself impose or authorise any local authority to impose for its purposes the following taxes:—

A toll; a tax or cess on land or land values; a tax on buildings; a tax on vehicles or boats; a tax on animals; an octroi; a terminal tax on goods imported into or exported from a local area; a tax on trades, professions and callings; a tax on private markets; a tax on advertisements; a tax on amusements or entertainments; a tax on betting or gambling; a tax imposed in return for services rendered by the local authority such as a water rate, a lighting rate, a scavenging, sanitary or sewage rate, a drainage tax and fees for the use of markets and other public conveniences. (Gov. Ind. 80-A (3) a; Sch. Tax Rules)

146. Each Provincial Government shall establish and maintain out of the provincial revenues a Famine Insurance Fund in accordance with its requirements and shall control and administer such fund in accordance with

the rules to be approved by the Provincial legislature. (D. R. 39)

147. The Governor General in Council may in his own name sell or dispose of any real or personal estate in the Commonwealth not belonging to the Provinces or raise money on any such real or personal estate on mortgage or otherwise, or raise moneys on the security of the revenues of the Commonwealth and make proper assurances for any of these purposes and purchase or acquire property in the Commonwealth and make any contract for the purposes of this Act. Every assurance or contract made for the purpose of this section shall be executed by such person and in such manner as the Governor General in Council by resolution directs or authorises and if so executed may be enforced by or against the Governor General in Council. (Gov. India § 30.)

148. (1) The Governor in Council of a Province may in his own name, sell or dispose of any real or personal estate belonging to the province or raise money on any such real or personal estate on mortgage or otherwise or raise moneys on the security of provincial revenues and make proper assurances for any of these purposes and purchase or acquire any property in the province and make any contract for the purposes of this Act.

(2) The Governor in Council and any other person authorised by him may make any grant or disposition of any property accruing to the Government of the province by forfeiture, escheat or lapse or by devolution as *bona vacantia* to or in favour of any relative or connection of the person from whom the property has accrued to or in favour of any other person. (Gov. Ind. § 31.)

(3) Every assurance or contract, made for the purposes of this section shall be executed by such person and in such manner as the Governor in Council by reso-

lution directs or authorises and if so executed may be enforced by or against the Government of the province.

149. Neither the Governor General nor any member of the Executive Council of India, neither the Governor of a province nor any member of the Executive Council of a province shall be personally liable in respect of any assurance or contract made by or on behalf of the Governor General in Council or the Governor in Council as the case may be or any other liability incurred by the Governor General or the Governor General in Council or by the Governor or the Governor in Council, in his or their official capacity, nor shall any person executing any assurance or contract on behalf of the Governor General in Council or the Governor in Council be personally liable in respect thereof; but all such liabilities and all costs and damages in respect thereof shall be borne by the revenues of the Commonwealth or of the Province as the case may be. (C.f. Gov. India §32(4.))

150. (1) The Government of the Commonwealth may sue or be sued by the name of such officer as may be appointed by the Governor General in Council in that behalf.

(2) The Governor in Council of a province may sue and be sued in his name as a body corporate. (C. f. Gov. India § 32.)

151. There shall be paid to the Governor General of India, the Governor of each Province, the Commander-in-Chief of His Majesty's forces in India and the members of the Executive Council of India and of each province, out of the revenues of the Commonwealth or of the province as the case may be, such salaries as shall be fixed by the Parliament in that behalf.

The salary of a Governor General or a Governor shall not be altered during his continuance in office.

Suitable provision shall be made out of the revenues of the Commonwealth or of the province as the case may

be for the maintenance of the official residence and establishment of the Governor General or the Governor. (C.f. Gov. India § 85. Ir. F. S. Art. 58).

152. Notwithstanding anything contained in this constitution or in any Act of Parliament or of any Provincial Legislature the maximum salary payable to any minister, judge, secretary, the holder of any public office, or any member of the public services of the Commonwealth or of a province shall not exceed Rs. 2000 a month: Provided that nothing herein shall apply to the salaries payable to the Governor General, Governor, Commander-in-Chief or to any officer in His Majesty's Forces or to any one employed by the Government of India or of a province temporarily under a special contract.

153. The rights of the State in and to natural resources, the use of which is of national importance, shall not be alienated. Their exploitation by private individuals or associations shall be permitted only under state supervision and in accordance with conditions and regulations approved by legislation. (Ir. F. S. Art. 11).

12. DEFENCE

154. (1) The Parliament has the exclusive right to regulate the raising and maintaining of such military, naval and air forces as my be required for the defence of the Commonwealth; and every such force shall be subject to the control of the Parliament. (Ir. F. S. Art. 45. 3 Keith Ch. X.)

(2) For the purposes aforesaid, the Governor General in Council may with the consent of Parliament raise moneys on the security of the revenues of the Commonwealth and if necessary and with the consent of a majority of the provincial Governments also on the security of the revenues of the provinces.

155. The parliament may vote such moneys as may

be required not only for the Commonwealth forces but for such other military, naval or air forces of His Majesty as may with its consent be employed for the defence of the Commonwealth.

156. (*a*) The Government of the commonwealth shall afford to His Majesty's Imperial Forces such harbour and other facilities as may from time to time be agreed upon between the British Government and the Commonwealth Government.

(*b*) The ports of Great Britain and the Commonwealth shall be freely open to the ships of the other country on payment of the customary port and other dues.

157. Save in the case of actual invasion, the Commonwealth shall not be committed to active participation in any war without the assent of the Parliament. (Ir. F. S. Art. 48).

158. The Commonwealth shall protect every province and every Indian State against invasion and, on the application of the executive government of the province or of the State, against domestic violence. (Austr. S. 119).

159. The jurisdiction of courts martial shall not be extended to or exercised over the civil population save in time of war, and for acts committed in time of war, and in accordance with the regulations to be prescribed by law. Such jurisdiction shall not be exercised in any area in which the civil courts are open or capable of being held, and no person shall be removed from one area to another for the purpose of creating such jurisdiction. (Ir. F. S. Art. 69.)

160. A member of the armed forces of the Commonwealth not on active service shall not be tried by any court martial or other military tribunal for an office cognisable by the civil courts, unless such an offence shall have been brought expressly within the jurisdiction of courts martial or other military tribunal by any code of laws or regulations for the enforcement of military dis-

cipline which may be hereafter approved by Parliament. (Ir. F. S. Art. 70; I. L. P. draft.)

161. The Commonwealth is empowered to assume any lands or public property in any province required for any purposes in connection with the defence of the country or for any other national purpose which the Parliament may declare to be necessary in the interests of the Commonwealth. (Br. N. Am. S. 117.)

13. ELECTORAL RIGHTS, DISABILITIES AND OFFENCES

162. Every person shall be entitled to have his name registered on the electoral roll of a constituency who is able to read and write and has the qualifications prescribed for an elector of that constituency and who is not subject to any of the disqualifications hereinafter set out, namely,

(*a*) who is a deaf-mute or a leper or has been adjudged by a competent court to be of unsound mind; or

(*b*) who is under 21 years of age; or

(*c*) who is not a British subject or is under an acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power; or

(*d*) who has been convicted of treason to the Swarajya of the Commonwealth of India.

163. No person shall be eligible for election, or capable of sitting as a member of the senate or of the Legislative Assembly or of a Provincial Legislative Council who

(*a*) is a deaf-mute or a leper or has been adjudged by a competent court to be of unsound mind; or (c. f. present rule; S. Afr. S. 52 (c))

(*b*) is an undischarged bankrupt or insolvent; or (Austr. S. 44 (iii); S. Afr. S. 53 (c); present rule.)

(*c*) is not a British subject or is under any acknow-

ledgment of allegiance, obedience or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power; or (Austr. S. 44 (ii)).

(*d*) who has been convicted of treason to the Swarajya of the Commonwealth of India; or (Austr. S. 44 (iii.))

(*e*) holds any office of profit under the Crown or under the Government of the Commonwealth or of a province or any pension payable during the pleasure of the Crown or the Government of the Commonwealth or of any province; or (Austr. S. 44 (iv); S. Afr. S. 53 (d); Government of India S. 63 E.)

(f) has any pecuniary interest in any contract entered into with the Government for the service of the Commonwealth or of any province otherwise than as a member and in common with the other members of an incorporated company consisting of more than 25 persons. (Austr. S. 44 (v)).

Nothing in clause (e) shall apply to the office of any of the Ministers of State for the Commonwealth or for a province or to the receipt of pay, half-pay or a pension by any person as an officer or member of the King's navy or army or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth whose services are not wholly employed by the Commonwealth.

164. If a member of either House of parliament or a provincial Legislative Council becomes subject to any of the disabilities mentioned in the last preceding section or ceases to be qualified as required by law or fails for a whole ordinary session to attend without the leave of the Senate or the Assembly or the Legislative Council as the case may be his seat shall thereupon become vacant. (S. Afr. S. 54; Austr. S. 45.)

165. (a) No person who is a member of either House of parliament shall be capable of being chosen or

of sitting as a member of a provincial Legislative Council.

(b) No person who is a member of a provincial Legislative Council shall be capable of being chosen or of sitting as a member of either House of parliament or of another provincial Legislative Council.

166. If any person who is by law incapable of sitting as a member of any legislative body shall while so disqualified and knowing or having reasonable grounds for knowing that he is so disqualified sit or vote as a member of that legislative body, he shall be liable to a penalty of Rs. 500/- for each day on which he shall so sit or vote to be recovered on behalf of the Government of the Commonwealth or of the province as the case may be by action in any principal Civil Court of Original Jurisdication. (S. Afr. S. 55.)

167. (1) Votes shall in every case be given by ballot and in person.

(2) No person shall vote at any general election in more than one constituency.

168. Until the Parliament otherwise directs, the provisions of the Indian Election Offences and Enquiries Act 1920 and the rules relating to corrupt practices now in force, shall be deemed to be part of this constitution and apply to election offences and enquiries.

169. (1) Members of all legislative bodies shall be elected by territorial electorates and no communal electorates shall be constituted either by the Parliament or by a Provincial Legislature.

(2) But each legislative body may, in any province or area or in any class of cases or for any community or interest, when the ordinary method of election will in its opinion fail to do justice, authorise the reservation of seats or the use of the single transferable vote, the cumulative vote, the List system or any other method of election as it may think fit.

170. Both Houses of Parliament and each Provincial. Legislative Council shall revise their respective constituencies at least once in every ten years, but any alteration in the constituencies shall not take effect during the life of the chamber or the council sitting when such revision is made. (Ir. F. S. Art. 26).

14. MISCELLANEOUS

171. Subject to the provisions of the next succeeding Section, all officers now in the public services of the Government of India shall, become officers of the Commonwealth.

172. (*a*) As soon as possible after the commencement of this constitution, the Governor-General in Council shall appoint a Public Services Commission to make recommendations for such re-organisation and re-adjustment of the departments of the Public Services as may be necessary. The Commission shall also make recommendations in regard to the assignment of officers to the several Provinces. (I.L.P.)

(*b*) The Governor General in Council, may, after such Commission has reported, assign from time to time to each Province such officers as may be necessary for the proper discharge of the functions reserved or delegated to it, and such officers, on being so assigned, shall become officers of the Province. (I.L.P.)

173. Any officer of the Public Service of the Government of India or of any other provinces at the commencement of this constitution who is not retained in the service of the Commonwealth or assigned to that of a Province, shall be entitled to receive such pension, gratuity or other compensation as he would have received in like circumstances if the Commonwealth had not been established. (I.L.P.)

174. Any officer of the Public Services of the Government of India or of any of the Provinces who is retained in

the service of the Commonwealth, or assigned to that of a Province, shall retain all his existing rights, and shall be entitled to retire from the service at the time at which he would have been entitled by law to retire, and on the pension or retiring allowance to which he would have been entitled by law in like circumstances if the Commonwealth had not been established. (I. L. P.)

175. All rules that may be made by the Government of the Commonwealth, the Government of a province, or any authority executive, legislative, Judicial, or local, established by, under or in pursuance of the provisions of this constitution shall be duly published in the prescribed official gazette.

176. The Governor-General and the members of his executive council, the Governor and the members of his executive council, the president and deputy president of every legislative body, the Justices of the supreme Court, the Judges of the High court, the Secretaries to every department of Government and the heads of every department of the administration and the members of the public Services commission shall, each of them, before he enters upon the execution of his office, make the following oath or affirmation:

"I do solemnly swear (affirm) that I will faithfully execute the duties of my office and will faithfully and to the best of my ability preserve, protect and defend the constitution of the Commonwealth of India".

15. AMENDMENT OF THE CONSTITUTION

177 (*a*) This Constitution shall not be altered except in the following manner:—

The proposed alterations must be passed by an absolute majority of each House of Parliament, and not less than two nor more than six months after its passage through both Houses of Parliament shall be submitted to the Provincial Legislatures,

But if either House of Parliament passes any such Bill by an absolute majority, and the other House objects or fails to pass it, or passes it with any amendment to which the first mentioned House will not agree, and if after an interval of three months, the first mentioned House, in the same or the next session again passes the Bill by an absolute majority, with or without any amendment which has been made or agreed to by the other House, and such other House rejects or fails to pass it, or passes it with any amendment to which the first-mentioned House will not agree, the Governor General may submit the Bill as last proposed by the first-mentioned House, and either with or without any amendments subsequently agreed to by both Houses, to the Provincial Legislatures.

If in a majority of the Provinces a majority of the members of the Provincial Legislatures approve the Bill, and if a majority of all the members of the Provincial Legislatures voting also approve the Bill, it shall be presented to the Governor General for assent.

(b) No alteration diminishing the proportionate representation of any Province in either House of Parliament or the number of representatives of a Province in the Legislative Assembly, or increasing or diminishing or otherwise altering the limits of a Province, or in any matter affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the members of the Legislature of the Province voting on the Bill approve it. (Austr. 128 U. S. Art. 5; Cf. Ir. F. S. Art. 49; S. Afr. 152. I. L. P. Draft is followed).

16. DEFINITIONS

178. The provisions of this Constitution referring to the King shall extend to His Majesty's heirs and successor

in the sovereignty of the United Kingdom of Great Britain and Ireland. (S. 2 Austr. and S. 3 S. Afr.)

(2) *Self-Governing Dominion** means the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State or Newfoundland. (See Finance Act 1923, Sec. 19 (4); 3 Keith, p. 1313; c.f. definitions in Naval Discipline (Dominion Forces) Act, 1911, Sec. 1 and Copyright Act, 1911, Sec. 35.)

(3) *The Parliament* means the Parliament of India.

(4) *The Governor-General in Council* means the Governor-General acting with the advice of the Executive Council of India.

(5) *Governor-in-Council* means the Governor of a Province acting with the advice of the Executive Council of the Province.

(6) *Province* means such part of the Commonwealth of India as has, by or under this Act, a responsible government consisting of a Governor, a Legislative Council and an Executive Council responsible to that legislature, and includes any part of India which is directly subject to the Parliament of India and to the executive responsible to that Parliament.

(7) *Constituency* means any area rural, urban or territorial returning one or more members to serve in either

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* The Irish Free State Constitution Act, 1922, Section 4 says "Nothing in the said Constitution shall be construed as prejudicing the power of Parliament to make laws affecting the Irish Free State in any case where, in accordance with constitutional practice, Parliament would make laws affecting other self-governing Dominions". But when a Dominion parliament has plenary powers including a power to alter its own constitution and to a certain extent extra-territorial jurisdiction, the residuary power of the British Parliament has reached the vanishing point and can only be exercised in respect of inter-Dominion or quasi-federal matters. For all practical purposes, "since the middle of the nineteenth century the relation of the Imperial Government to the dominions has been essentially federal" (A. P. Newton, "Federal and Unified Constitutions," p. 37.)

chamber of the Parliament or in a Provincial Legislative Council (S. 8 Austr.)

(8) *Transferable vote* means a vote—(a) capable of being given so as to indicate the voter's preference for the candidates in order; and (b) capable of being transferred to the next choice when the vote is not required to give a prior choice the necessary quota of votes, or when, owing to the deficiency in the number of the votes given for a prior choice, that choice is eliminated from the list of candidates. [Representation of People Act, 1918, Sec. 41 (6)].

(9) The "Cumulative vote" means that system by which each voter has a number of votes equal to the number of representatives to be elected and is entitled to distribute his votes in any manner he likes giving one vote to a candidate, all votes to one candidate or otherwise. (Marriott, p. 491; Holt, p. 161.)

(10) The "List system" means that by which each voter may cast as many votes as there are candidates to be elected but is required to distribute his votes among them and each vote cast is counted both for the individual candidate and for the party nominating him, giving to each party representation in proportion to the number of votes given to its candidates and to each individual in it the total personal vote he receives. (French Senate Law arts. 4 & 5; Holt, pp. 157-8.)

(11) The territories which at the time of the commencement of this constitution are administered under the Government of India Act, 1919, shall constitute the Commonwealth of India.

APPENDIX A

Resolutions passed by the A. I. C. C. at Bombay in May, 1927.

HINDU-MOSLEM UNITY

The All India Congress Committee approves and adopts the report of the working Committee on the Hindu-Moslem question and the recommendations contained therein and calls upon all Congress organisations to take necessary steps to have the following recommendations carried out:

(1) *Joint Electorates.*—That in any future scheme of constitution, so far as representation in the various legislatures is concerned, joint electorates in all the provinces and in the Central Legislature be constituted.

(2) *Reservation of seats.*—That, with a view to give full assurances to the two great communities that their legitimate interests will be safeguarded in the Legislatures, for the present, and if desired, such representation of the communities should be secured by the reservation of seats in joint electorates on the basis of population in every province and in the Central Legislature:

Provided that reciprocal concessions in favour of minorities including the Sikhs in the Punjab may be made by mutual agreement so as to give them representation in excess of the proportion of the number of seats to which they would be entitled on the population basis in any province or provinces, and the proportions so agreed upon for the provinces shall be maintained in the representation of the two communities in the Central Legislature from the provinces.

(3) *(a) N.W.F. Province and British Baluchistan*—That the proposal made by the Muslim leaders that reforms should be introduced in the N. W. F. Province and British Baluchistan on the same footing as in other provinces is in the opinion of the committee, a fair and resonable one, and should be given effect to, care being taken that simultaneously with other measures of administrative reform an adequate system of Judicial administration shall be introduced in the said provinces.

(3) *(b) Separation of Sind from Bombay.*—

(i) That with regard to the proposal that Sind should be cons tituted into a separate province, this Committee is of opinion that the time has come for the redistribution of provinces on linguistic basis—a principle that has been adopted by the constitution of the Congress.

(ii) The Committee is also of opinion that such readjustment of provinces be immediately taken in hand and that any province which demands such reconstitution on linguistic basis be dealt with accordingly.

(iii) The Committee is further of opinion that a beginning may be made by constituting Andhra, Sind and Karnatak into separate provinces.

(4) *Liberty of conscience.*—That in the future Constitution, liberty of conscience shall be guaranteed and no legislature, central or provincial, shall have power to make any laws interfering with liberty of conscience.

"Liberty of Conscience" means liberty of belief and worship, freedom of religious observances and association and freedom to carry on religious education and propaganda with due regard to the feelings of others and without interfering with similar rights of others.

(5) *Inter-communal matters.*—That no Bill, Resolution, Motion or Amendment regarding intercommunal matters shall be moved, discussed or passed in any legislature, Central or Provincial, if a three-fourths majority of the members of either community affected thereby in that legislature oppose the introduction, discussion or passing of such Bill, Resolution, Motion or Amendment.

"Inter-communal matters" means matters agreed upon as such by a Joint Standing Committee of both communities, of the Hindu and Moslem members of the legislatures concerned, appointed at the commencement of every session of the legislature.

Resolutions passed by the Unity Conference and modified and approved by the A. I. C. C. at Calcutta in October, 1927.

HINDU-MOSLEM UNITY.

(i) *Conversion.*—The All India Congress Committee resolves that every individual or group is at liberty to convert or reconvert another by argument or persuasion but no individual or group shall attempt to do so, or prevent its being done, by force, fraud or other unfair means such as the offering of material inducement. Persons under eighteen years of age should not be converted unless it be along with their parents or guardians. If any person under eighteen years is found stranded without his parents or guardian by persons of another faith, he should be promptly handed over to persons of his own faith. There must be no secrecy as to the person, place, time and manner about any conversion or reconversion, nor should there be any demonstration of jubilation in support of any conversion or reconversion.

Whenever any complaint is made in respect of any conversion or reconversion, that it was effected in secrecy or by force, fraud or other unfair means, or whenever any person under eighteen years of age is converted, the matter shall be enquired into and decided by arbitrators who shall be appointed by the Working Committee either by names or under general regulations and their decision shall be final.

(ii) *Cow and Music.*—The All India Congress Committee while approving of the following resolution on the Cow and Music question as a fair settlement of opposite demands and points of view, authorises members of the Congress to carry on propaganda among Hindus and Moslems along the lines indicated in the resolution and calls upon the Working Committee to appoint a Committee for the purpose of carrying on such propaganda;

And further resolves that the resolution do come up for confirmation at the meeting of the All India Congress Committee and the Congress to be held in Madras :

"Whereas no community in India should impose or seek to impose its religious obligations or religious views upon any other community but the free profession and practice of religion should, subject to public order and morality, be guaranteed to every community and person,

Hindus are at liberty to take processions and play music before any mosque at any time for religious or other purposes but there should be no stoppage of the processions nor special demonstrations in front of a mosque nor shall the songs or music sung or played in front of a mosque be of such a character as is calculated to cause annoyance or special disturbance to the worshippers in the mosque.

Moslems are at liberty to sacrifice cows or, subject to existing municipal laws regulating the slaughter of animals for purposes of food, to slaughter cows, in any town or village, in any place not being a thorough-fare, nor one in the vicinity of a temple or a *mandir* nor one exposed to the gaze of Hindus.

Cows should not be led in procession or in demonstration for sacrifice or slaughter.

Having regard to the deep-rooted sentiment of the Hindu community in the matter of cow-killing, the Moslem community is earnestly appealed to, so to conduct the cow sacrifice or slaughter as not to cause annoyance to the Hindus of the town or village concerned."

Whenever a complaint is made that any of the provisions of this resolution have been contravened, it shall be enquired into and decided by arbitrators appointed by the Working Committee by names or under general regulations and their decision shall be final.

Appendix B.

MY PROPOSALS FOR SOLVING THE COMMUNAL PROBLEMS OF SOUTH INDIA (18—11—27).

An attempt must I think be made now to solve the outstanding differences as between the several Hindu castes in the Province of Madras. I am sure all will agree that any solution that may be suggested must be a fair and just settlement of opposite points of view. In my individual capacity, I make the following suggestions tentatively and only as a basis for discussion. I propose to interview representative members of all castes with a view to see whether any stable and lasting adjustment is feasible on these or on other lines, and then I propose to convene a representative Unity Conference for the purpose of a full and final discussion to be followed, if possible, by an authoritative settlement. In making these wholly tentative proposals I have kept in view the principle that politics and public life should unreservedly be secularised and that freedom and equality and justice are the pillars of nationalism, democracy and swaraj which constitute our goal.

GENERAL

1. Whereas the interests of a Modern State and, in particular of a Swaraj State such as India ought to be, require that there should be peace and order and active co-operation as between the several castes, sub-castes and sects of Hindus, and whereas therefore no caste sub-caste or sect or member of it shall be held to be superior or inferior to any or all the other castes, sub-castes or sects by reason of birth, all castes are declared to be on a footing of perfect equality and no superiority or inferiority of any caste and no hierarchy of castes nor any domination by one caste or community over another shall be recognised or given effect to by the State for any purpose.

SERVICES

2. Differences of caste or sect shall not prejudice any citizen of the Commonwealth of India in any way, within the limits laid down by the general laws, particularly in regard to public employments, offices of profit or honour and the exercise of any trade or calling.

3. No caste or sub-caste or sect of Hindus shall have a monopoly or be in preponderant numbers in any particular branch or department of public service or in any particular office. The public services shall be open to all the castes and each caste shall have equal right and be given equal opportunity and treatment in connection therewith. Without reference to any theory of communal representation in services and without any reference to any arithmetical proportion, each caste, sub-caste or sect shall be given, in fact, a fair and just share in the public services.

4. When any complaint is made more or less generally, and not at the instance of or on behalf of any particular applicant for a post, that a particular caste, sub-caste or sect is not justly treated in the matter of public services, the matter shall be enquired into and redressed by a Board of Conciliation and Adjustment on which all the castes shall be represented.

SOCIAL

5. Each caste or sect is at liberty to retain its existing caste or sect name or to choose for itself any new caste or sect name which alone and no other shall be employed by the other castes and by the State in referring to the caste or sect concerned. In particular, the Brahmin castes shall not refer to the members of any other Hindu castes as Sudras. Neither in the records of the State nor in other public records, nor in journals nor in meetings or assemblies of any description, shall the expression Sudras be used. The castes other than the Brahmin castes shall not call themselves or be called Non-Brahmins, it being a word of exclusion. Nor shall the expression Non-Brahmins be employed in the records of the State or in public records or journals or in meetings or assemblies of any description.

6. No Brahmin or any member of any other caste shall claim any social superiority over members of other castes by reason of his or her caste. By reason of any alleged caste superiority, no one should claim first Thambulam or first seat or any similar or other preference or privilege. No Brahmin or any member of any other caste shall insist on members of other castes saluting them in a particular way or on their uncovering their head or body or on their keeping the road at a particular distance. No Brahmin in particular is to use towards members of any other castes unless permitted by friendship or familiarity or by the usage of menial or domestic service, the singular number. Courtesy between one caste and another should be the invariable rule and no person either belonging to any caste or members of it may make any disparaging remarks or use any insulting or vulgur expression in respect of the caste criticised or the caste of the person criticised or as regards the origin or name of the caste. Nor shall vulgar and insulting names for castes be employed to any extent or in any manner.

7. While every member of any caste is at liberty to interdine or

not with members of any other caste or to partake or not of food prepared by members of any other caste no propaganda against or of condemnation of interdining nor condemnation of the food partaken, on the ground that the one caste or the other is superior or inferior shall be allowed, but such propaganda or condemnation shall be declared to be defamatory.

8. As regards intermarriage, each individual is to be at liberty to contract or not as he likes an intermarriage with a member of another caste, sub-caste or sect. No propaganda against or condemnation of an intermarriage proposed or effected shall be permitted to the extent to which it proceeds upon the basis that one caste or the other is superior or inferior but shall be declared to be defamatory.

9. No existing caste shall be described or referred to in any context, other than a strictly scientific or historical one, as either exclusively Aryan or exclusively Dravidian ; nor shall any other racial distinction be urged for any contemporary purpose between one caste and another.

10. Tamil, Telugu, Malayalam and Canarese are declared to be respectively the mother tongues of the communities speaking those languages, whatever their castes. Samskrit shall not be considered as the special language of any caste or community or of any Province, and the study of Samskrit literature, including the *Vedas*, shall not be considered as the special privilege of any caste but is open to all.

LEGAL.

11. The rules of Hindu Law determining the rights of illegitimate offspring of the castes described in the Smritis as Dwijas shall apply equally to every such family belonging to any other caste as declares its acceptance of such rules.

12. The rules of Hindu Law in the matter of adoption applicable to the castes described in the Smrities as Sudras shall apply to every such family belonging to any other caste as accepts such rules.

13. All persons have an equal right to the use of roads, Courts of Justice and all other places of business or resort dedicated to the public, provided they do not disturb public order or disobey any lawful notice issued by a competent authority.

RELIGIOUS.

14. Freedom of conscience and the freedom of profession and practice of religion, are subject to public order and morality hereby guaranteed to every person, caste, sub-caste, sect or community.

15. No caste, sub-caste, sect or community shall impose or seek to impose its religious obligations or its religious views or practices upon any other caste, sub-caste, sect or community.

16. Each caste, sub-caste, sect, family or person is at liberty to have any member of any caste as *Purohit*, Priest or *Guru*, and no caste, sub-caste or sect shall coerce or compel a person, family, caste, sub-caste or sect to accept any person as *Purohit*, Priest or *Guru*.

17. No law may be made either directly or indirectly to endow any religion, or prohibit or restrict the free exercise thereof, or give any preference, or impose any disability on account of religious belief or religious status, or affect prejudicially the right of any child to attend a school receiving public money without attending the religious instruc-

tions at the school, or make any discrimination as respects state aid between schools under the management of different religious denominations, or divert from any religious denomination or any educational institution any of its property except for the purpose of roads, railways, lighting, water or drainage works or other works of public utility, and on payment of compensation.

18. No caste, or community shall be treated by the other castes or communities or by the State as untouchable. Nor shall any caste or community be called or referred to as Chandalas, Neechas or Pariahs.

Appendix C.

Resolution passed by the Legislative Assembly on 18th Feb. 1924.

(Ayes 76-Noes. 48)

"This Assembly recommends to the Governor-General in Council to to take steps to have the Government of India Act revised with a view to establish full responsible Government in india and for the said purpose:

(a) to summon at an early date a representative Round Table Conference to recommend, with due regard to the protection of the rights and interests of important minorities, the scheme of a constitution for India; and

(b) after dissolving the Central Legislature, to place the said scheme for approval before a newly elected Indian Legislature for its approval and submit the same to the British Parliament to be embodied in a Statute."

Resolution passed by the Legislative Assembly on the 8th September, 1925.

(Ayes 72-Noes 45)

"This Assembly while confirming and reiterating the demand contained in the Resolution passed by it on the 18th February 1924, recommends to the Governor-General in Council that he be pleased to take immediate steps to move His Majesty's Government to make a declaration in Parliament embodying the following fundamental changes in the present constitutional machinery and administration of India:

(a) The Revenues of India and all property vested in or arising or accruing from property or rights vested in His Majesty under the Government of India Act, 1858, or the present Act or received by the Secretary of State in Council under any of the said Acts shall hereafter vest in the Governor-General in Council for the purposes of the Government of India.

(b) The Governor-General in Council shall be responsible to the Indian Legislature and subject to such responsibility shall have the power to control the expenditure of the Revenues of India and make such grants and appropriations of any part of those Revenues or of any other property as is at present under the control or disposal of the Secretary of State for India in Council, save and except the following ... all for a term of years remain under the control of the Secretary ... fo India:

(i) Expenditure on the Military Services up to a fixed limit.

(ii) Expenditure called as political and foreign.

(iii) The payment of all debts and liabilities hitherto law contracted and incurred by the Secretary of State for India in Co on account of the Government of India.

(c) The Council of the Secretary of State for India sha abolished and the position and functions of the Secretary of Stat India shall be assimilated to those of the secretary of State for self-governing Dominions save as otherwise provided in clause (b).

(d) The Indian Army shall be nationalised within a reason short and definite period of time and Indians shall be admitte service in all arms of defence and for that purpose, the Gove General and the Commander-in-Chief shall be assisted by a Min responsible to the Assembly.

(e) The Central and Provincial Legislatures shall consist ent of members elected by constituencies formed on as wide a franchi possible.

(f) The principle of responsibility to the Legislature shal introduced in all branches of the administration of the Central Gov ment subject to transitional reservations and residuary powers in Governor-General in respect of the control of Military, Foreign Political affairs for a fixed term of years:

Provided that during the said fixed term the proposals of the Go nor-General in Council for the appropriation of any revenue or money military or other expenditure classified as 'Defence' shall be submi to the vote of Legislature; but that the Governor-General in Cou shall have power, notwithstanding the vote of the Assembly, to ap priate up to a fixed maximum any sum he may consider necessar such expenditure and in the event of a war to authorise such expe ture as may be considered necessary exceeding the maximum so fi

(g) The present system of dyarchy in the Provinces shall be abol ed and replaced by unitary and autonomous responsible Governm subject to the general control and residuary powers of the Cen Government in inter-provincial and All-India matters.

(h) The Indian Legislature shall after the expiry of the fixed of years referred to in clauses (b) and (f) have full powers to make amendments in the constitution of India from time to time as appear to it necessary or desirable.

This Assembly further recommends to the Governor-Genera council that necessary steps be taken:

(a) to constitute in consultation with the Legislative Assemb convention, round table conference or other suitable agency adequa representative of all Indian, European and Anglo-Indian interest frame with due regard to the interests of minorities a detailed sch based on the above principles, after making such inquiry as ma necessary in this behalf;

(b) to place the said scheme for approval before the Legisla Assembly and submit the same to the British Government to embodied in a Statute."

...ent Thought Press, Triplicane, Madras.